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OVERSIGHT ON THE IMPLEMENTATION OF THE AGRICULTURAL CREDIT ACT OF 1987

HEARINGS

BEFORE THE

COMMITTEE ON AGRICULTURE,
NUTRITION, AND FORESTRY

AND THE

SUBCOMMITTEE ON AGRICULTURAL CREDIT

OF THE

COMMITTEE ON AGRICULTURE,
NUTRITION, AND FORESTRY
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

CREDIT FOR AGRICULTURE AND RURAL COMMUNITIES WITH SPECIAL ATTENTION TO THE AGRICULTURAL CREDIT ACT OF 1987

FEBRUARY 13, 1989—SIOUX CITY, IA
APRIL 26, 1989—BISMARCK, ND
MAY 9, JUNE 19, AUGUST 1, 1989—WASHINGTON, DC

Printed for the use of the
Committee on Agriculture, Nutrition, and Forestry

U.S. GOVERNMENT PRINTING OFFICE
23-112 ⇆ WASHINGTON : 1990

S 161-9

For sale by the Superintendent of Documents, Congressional Sales Office
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OVERSIGHT ON THE IMPLEMENTATION OF THE AGRICULTURAL CREDIT ACT OF 1987

With Respect to Credit for Agriculture and Rural Communities

MONDAY, FEBRUARY 13, 1989

U.S. SENATE,
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Sioux City, IA.

The committee met, pursuant to notice, at 2 p.m. in the Sioux City Convention Hall, Sioux City, IA, Hon. Patrick J. Leahy (chairman of the committee), Hon. Tom Harkin, presiding.

Present or submitting a statement: Senators Harkin, Daschle, and Kerrey.

STATEMENT OF HON. TOM HARKIN, A U.S. SENATOR FROM IOWA

Senator HARKIN. The Senate Committee on Agriculture, Nutrition, and Forestry will come to order.

On behalf of the Senate Committee on Agriculture, Nutrition, and Forestry, I would like to welcome you all to this oversight hearing on credit for agriculture and rural communities, with special attention to the Agricultural Credit Act of 1987. In particular, I want to extend a warm Iowa welcome to my colleagues, Senator Tom Daschle, from our neighboring State of South Dakota, and Senator Bob Kerrey, from Nebraska, both of whom are also members of the Senate Agriculture Committee. Our States have much in common with respect to the topics of today's hearing, and I certainly look forward to their participation.

I am a strong believer in the value of Agriculture Committee field hearings like the one we are holding here today. Such hearings enable the committee to gather much useful information directly from people whose day-to-day activities give them a wealth of information about the way Federal policies and programs work at the local level, where it really matters.

This afternoon, we will learn about the current financial situation and outlook in agriculture and receive an update on current topics and issues involving the Farm Credit System and the Farmers Home Administration, including a review of the implementation of the Agricultural Credit Act of 1987. That law contains important provisions crafted to strengthen the Farm Credit System, to guarantee certain rights for Farm Credit and FmHA borrowers, to encourage mediation rather than litigation of disagreements over farm debts, and to provide opportunities for purchasing Farm Credit System inventory land through the demonstration project. Our second panel will provide information about the current situation with respect to Farmers Home Administration's loan and grant programs for rural areas and small communities.

We have a very severe water problem in Iowa; and I think, if I'm not mistaken, you do in your States also, in Nebraska and South Dakota. I just might point out in the beginning that the Bush budget contains a 25 percent cut in those valuable programs to help our small communities in water and waste disposal.

The various topics of today's hearing are united by this common theme: Access to adequate amounts of capital is critical to the future of our family farms and rural communities. Those family farms and rural communities are irreplaceable parts of the social fabric of our Nation and major contributors to its wealth. But they will not survive or share fully in national and international economic growth and development unless their own economic base is rebuilt and strengthened.

Rebuilding and strengthening the economic base of our family farms and rural communities depends heavily on individual and community efforts at the local level, requiring much imagination, cooperation and hard work. Here in the Midwest we are fortunate to have abundant human and natural resources: well-educated and industrious people, highly productive soils and climate. But those ingredients are not sufficient by themselves; adequate capital resources are also needed. Farmers need capital to purchase seed, feed, fertilizer, buildings, machinery, and other requirements for agricultural production. Those purchases are, in turn, critical to local economies. Businesses and industries need capital if they are to grow and provide jobs. And rural communities need capital to build and maintain the basic infrastructure that is essential to economic development, such as water and sewer facilities, communications links, roads, bridges, hospitals, and so forth.

The programs that we will examine at today's hearing can provide significant help toward meeting these capital needs. By helping to supply an essential resource, these programs help farm families and rural communities help themselves to build a better and more secure economic future. We have heard much, recently, about the need in our country for greater investment to achieve higher productivity. These programs provide for investments in our people, farms, and rural communities that will maintain and even increase their already remarkable productivity. That is why the massive cuts the programs have suffered in recent years, I believe, were so short-sighted.

The Farm Credit System and Farmers Home Administration have been through some tough times recently as a consequence of this decade's farm financial crisis. FmHA, in particular, still has much to do toward working out the problems of unpaid debts remaining from that crisis. But I have seen nothing to negate the basic worth and validity of these programs. I believe I can speak for my two friends and colleagues here today in stating our commitment to examining and working on problems as they arise, so that these programs will continue to help provide the capital resources needed by family farms and rural communities.

I therefore look forward with great interest to this hearing and would now like to turn to Senator Daschle and Senator Kerrey, for any opening remarks they may have.

Senator Daschle.

STATEMENT OF HON. THOMAS A. DASCHLE, A U.S. SENATOR FROM SOUTH DAKOTA

Senator **Daschle**. Senator Harkin, I want to thank you for holding this hearing this afternoon. To my knowledge, it is the very first hearing of the One Hundred First Congress to be held on agriculture anywhere in the country, and it's appropriate, I think, given the kind of dedication you demonstrated during the last couple of years, as we formulated the new farm credit legislation which is now on the books. Given your position on the Senate Agriculture Committee, your position on Senate Appropriations, as well as your new position as one of the key leaders in the Senate today as the Regional Whip, there is no one who is in a better position to set the stage as you have this afternoon.

These hearings are critical as we build the base for a better understanding and certainly for a better analysis overall, not only of farm credit but of farm financing. Many of us had extraordinarily high expectations as that legislation passed. I doubt that anyone made a more significant personal commitment to that legislation than did you, Senator Harkin.

But as I now look back over the implementation of that law, I'm disappointed—disappointed that some of my family farmers have not received the kind of assistance that I thought they would have received. I'm disappointed that we haven't been more aggressive in the implementation of many of the specific proposals. I'm disappointed that Farmers Home Administration has applied a double standard in the implementation of that legislation in many respects; asking for wide-open leverage to decide when they would have to meet the deadlines incorporated in that legislation, but demanding specificity with regard to adhering to deadlines when it came to the farmers themselves.

That double standard is wrong. I think we have a lot to do in farm credit in the months ahead. I think we have to ensure that the law is implemented as we envisioned it a year ago. I think that there is a possibility that legislation alone may not be enough, that we may have to revisit farm credit at some point in the future; and I'm certainly cognizant of the fact that even if we have an adequate farm credit bill, the concept of rural development financing is all the more important this year.

South Dakota and the Upper Midwest clearly need the kind of financing mechanisms and opportunities that have been provided to urban areas for a long period of time. Developing a strong, vital economy in agriculture is key, not only on the farms, but in our small towns as well.

So this issue, farm financing and rural development financing, is one that will be pervasive this year. It's all the more reason why starting it, as we are today, right outside of Nebraska and South Dakota and right here in Sioux City, Iowa, is so important.

And I thank you for taking the initiative to bring us together this afternoon.

Senator **Harkin**. Tom, thank you very much.

Senator Kerrey, welcome to Sioux City.

STATEMENT OF HON. J. ROBERT KERREY, A U.S. SENATOR FROM NEBRASKA

Senator **Kerrey**. Thank you, Tom. I also want to thank you for calling this hearing and point out that Senator Harkin has given us, I think, an awfully good opportunity. It's the middle of February. We have planting decisions that are being made right now. The Farmers Home Administration tells us that they have 24,000 or so of the restructuring applications in and ready to be processed. I have serious reservations about whether or not they have the staff that's needed to go through all the individual mediation that each one of these loans will require in order to get them restructured.

And what I hope all of you in this audience will appreciate is that Senator Harkin has given us a chance to actually get something done. This is a panel that has been given the authority of the full Agriculture Committee of the U.S. Senate. I am very often confronted, as I'm sure both Senator Daschle and Senator Harkin are as well, by individuals who say, "Here is the situation that I've got," either with the Farmers Home Administration or some other bureaucracy of government. "I'm being presented with an unreasonable situation. I would like to get some action taken. I would like to get something done, and all I'm getting so far is additional paperwork to fill out or some sort of a runaround and nothing seems to happen."

Though we may not look terribly imposing to some of you—and I hope that we do not overimpose ourselves on you—we do have the authority to take action. And there is an urgent need to act. It took a long time for the Farmers Home Administration to prepare the rules and regulations under which the restructuring program will operate and now we have found some problems with the effort.

The Farmers Home Administration is sitting here now saying to us they may not have the personnel necessary to get things done. I suggest there's an urgent need to act. Lives are at stake, not just numbers. This isn't just a political issue that we're trying to manipulate. Senator Harkin has brought to the Midwest the full Agriculture Committee so that we can hopefully get some action out of the Farmers Home Administration and out of the Farm Credit System.

Senator, I applaud you for doing it. I know the farmers of Nebraska need this very much.

Senator **Harkin**. Thank you very much, Senator Kerrey. And I know I speak for all of my colleagues on the Senate Ag Committee in welcoming you to the Senate Ag Committee. It's great to have the Midwest representation that we now have on the Senate Agriculture Committee. When I came to the Senate, there were just two of us, Ed Zorinsky and myself. And now we have Senator Conrad, Senator Daschle, Senator Kerrey, and myself. So now I think the Midwest is taking its rightful place on the Senate Agriculture Committee, and it's obviously a step in the right direction.

Here is what we are going to do today: We are going to have a couple panels, and we will hear from them. I will invite the panels up here to take their seats. We have one panel of about six people. Then we will have a second panel.

Then what I would like to do—one thing I've always done every time, Tom, I have ever had an involvement—whenever I've had a hearing, I always want to leave a little time at the end. Some of you came great distances. I want to leave some time at the end for any individuals out there who have something they want to give to us, any information, questions, comments, anything like that.

So if you have come here and you want to impart some information to us, think about it, get it down kind of as concise as you can, and at the end of our panels, I'll open it up. All I'll ask is that you give your name, where you're from; and if it's a name other than Smith, you have to spell it for our reporter here so she gets your spelling right on the record.

So let me call the first panel up here. Dr. Michael Duffy, extension economist with Iowa State University. He's coming up. And, now, Jo Ann Merfeld was going to be here from the Iowa Bankers Association. I guess she is snowed in at Des Moines, so now we have here—who do we have here from Wakefield, Nebraska? Oh, Randy Lanning. I'm sorry. Randy Lanning, representing the Nebraska Bankers Association.

Mr. LANNING. Just representing myself and the bank.

Senator HARKIN. Well, OK. Executive vice president of the Wakefield National Bank in Wakefield, Nebraska.

Second, John Martin, executive vice president and chief operating officer of the Farm Credit Banks of Omaha.

Next, Mike Thompson, director of the Iowa Farmer/Creditor Mediation Service in Des Moines. I have Randy out of order. You were next.

Then Mark Baxter, a farmer from Rockham, South Dakota. Are you here? That's Mark Baxter. Find your names there. And Gene Severens from the Center for Rural Affairs, Walthill, Nebraska.

I also want to introduce in the audience Bob Haegele, who is chief of the Farmers Programs for Iowa. Bob, it's kind of you to be here. He will be available for questions and comments. I can tell you, from my own personal experience working with Bob, he's very knowledgeable on these problems, and I have to tell you he's worked hard to resolve them and correct the procedures. I appreciate that very much. He's been involved from the very beginning in using mediation as a tool to resolve debt problems, and I want to thank you for the long and strong involvement on your part.

Also we have here Charles Caldwell from the legal division of the Farm Credit System, and also Don Korkow, who is Chief of Acquired Properties; is that right? Where are you two in here?

Mr. KORKOW. I'm Don Korkow.

Senator HARKIN. You're Don and Charles. Just in case we have some questions, we might need to call on you, OK? If you go to the bathroom, raise your hand.

All right. Thank you all for coming. What I'd like to do is to just start down with the list here. We'll start with Dr. Duffy first. I'd like to perhaps take each one of you—if this would be OK with my colleagues—and maybe 5, 7 minutes each. We'll just go down the list. And when we've finished, we'll open it up for questions and discussions, OK?

So Dr. Duffy, thank you very much for being here. I know that you've been involved for a long time in this and as an extension economist. Please proceed as you so desire. Now, if you have written statements—do you have written statements?

Mr. **Duffy**. Yes, sir.

Senator **Harkin**. If you do, they'll be made a part of the record in their entirety. I would ask unanimous consent to do that.

Mr. **Duffy**. Yes, sir.

Senator **Harkin**. If you would summarize your prepared statement, we would appreciate it.

Mr. **Duffy**. Right. Yes, I was going to.

Senator **Harkin**. Thank you.

STATEMENT OF MICHAEL D. DUFFY, EXTENSION ECONOMIST AND ASSOCIATE PROFESSOR OF ECONOMICS, IOWA STATE UNIVERSITY, AMES, IA

Mr. **Duffy**. In the interest of time, I think I will just summarize what my general feelings are. And I do appreciate the opportunity to be here today.

I'm an extension economist in farm management. I work as the State coordinator with the FARMAID program, which was Extension's answer to the farm financial crisis, where we try to work with individual farm families and help them find a way out of their problems. I'm also the State coordinator for the annual Iowa land value survey.

I would like to address this committee on a couple of issues that I think are important as we look at the whole general area of ag credit.

First is that the situation in agriculture has improved today, as we look at the growth statistics and you look at Iowa land values increasing 20 percent over the last year and so forth. But I think that it's very important that we're aware of what the nature of that recovery is, and that's primarily the direct Government payments from the Food Security Act of 1985.

In Iowa, over 18 percent of the gross farm income in 1987 was a result of the direct Government payment. So I think that we have to be careful when we look and we say that the situation has improved and that we do have a recovery.

I would also like to comment that I think that the problem in Iowa today is not a problem of credit, but a problem of creditworthiness. We have to work with each individual farm family to try to get them to a position to where they can obtain a loan and be able to service that loan.

In our work with the Farmers Home Administration and Farm Credit Services, we've found them to be extremely cooperative. We've held several joint meetings where our associates have been trained in their programs, trying to understand in how to implement and how we can best serve the farmers of Iowa to make sure they know their rights and exercise their rights fully.

We've worked with over 700 farm families since December 1, and it's interesting to note that what we've found has been almost an equal division between those who are looking for an expansion and those who are in severe financial difficulty. I feel that what we have today is a situation where some families are very much better off, primarily, again, because of the support from the Government program payments; but we also still have a lot of families that are in serious trouble.

I think that it's important in Iowa and all throughout the Midwest that we work toward improving efficiency on our farms, making sure that the farms that do get credit are the ones that are going to be able to survive and proceed into not only the 1990's but beyond. It's very important, I think, that we recognize that farms have to be efficient and that, as we work together, we have to realize and move forward to make sure that we ensure the efficiency on our Iowa farms.

[The prepared statement of Mr. Duffy appears at the conclusion of the hearing.]

Senator **HARKIN**. Mr. Duffy, thank you very much. I appreciate that, and I will have some questions for you on that as we go along here.

Next, I will call on John Martin, executive vice president and chief operating officer of the Farm Credit Services of Omaha.

STATEMENT OF JOHN MARTIN, EXECUTIVE VICE PRESIDENT AND CHIEF OPERATING OFFICER, FARM CREDIT SERVICES OF OMAHA, OMAHA, NE

Mr. **MARTIN**. Thank you. As Senator Harkin said, I'm executive vice president and chief operating officer of Farm Credit Services. And in that capacity, I have had the responsibility for implementing many of the provisions of the Agricultural Credit Act of 1987. I appreciate the opportunity to appear today before the committee for this field hearing and hope my testimony will help demonstrate to you our record of success in implementing these provisions.

Given the level of activity in the last few months, it's really difficult for me to believe that it's only approximately a year ago that the act was officially signed into law. I would like to comment, too, that Senators Harkin and Daschle were very influential in the passage of this legislation and very helpful in the formation of the act. With the addition of Senator Kerrey, given his background and experience in agriculture and rural development, we are fortunate, as a region, to have these Senators on the Agriculture Committee.

I also believe that you, as U.S. Senators, can be proud of the Omaha Farm Credit District, for the way it has worked to implement what you created only 1 year ago.

I have supplied the committee with additional material for the written testimony, which provides detailed information on the loan restructuring, number of resolutions and number of loans and acquired property, and other operating results.

This much is clear, however, from my perspective as it applies to the congressional intent in providing relief to financially distressed borrowers, and that's that the Omaha district is No. 1 in the Nation in implementing borrower rights provisions of the act.

Working together with your offices, we have established policies that not only meet the spirit and intent of the law, but in some cases go over and above the requirements of the act. For example, we have applied many of the borrowers' rights provisions retroactively, and we also chose to voluntarily expand the timeframe in which former owners could exercise their rights of first refusal to repurchase property.

Although earlier projections indicated that the Omaha district would need considerable financial assistance from the Federal Government to survive, we are proud to say our condition has improved to the point that very little of this assistance was needed in the Omaha district.

As you know, the Omaha Land Bank was certified last fall, and we were authorized to use up to $110 million in Federal financial assistance. This assistance was used to repurchase high-cost debt, which brought down our average cost of funds, and this transaction or series of transactions will save approximately $40 million per year in interest for the next few years. This is further evidence, I believe, of the recovery of our district.

Overall, 1988, relatively, was a great year for the Omaha district. New loan volume is up, and our earnings and capital positions are positive. We are also proud to note that our stock is no longer impaired and our financial position will be prepared under generally accepted accounting principles as opposed to regulatory accounting principles. We are well underway and are not only optimistic but enthusiastic about the future and our ability to meet the changing needs of rural America.

Certification also brought the Omaha district an opportunity to participate in the Farmers Home Demonstration Project. This program, intended to help move farm and ranch land acquired by the system back into the hands of family farmers, is now up and running, where the first loan under this program in the Nation was approved just a few days ago in the State of Iowa.

As of yearend, there remains about 280,000 acres of acquired properties in the four States served by the Omaha district, in addition to future acquired property. There is and will be land available for sale under the demonstration program.

Over the past year, we've also worked hard to meet other requirements of the Agricultural Credit Act. Borrower rights provisions are in place; loan restructuring continues; the merger of the land bank and the Federal Intermediate Credit Bank was completed. The Omaha Farm Credit Bank has purchased an investment in Farmer Mac so that we can participate in that process, and the Farmers Home demonstration project is a reality. Financial assistance has been utilized, and the 31 Federal land bank associations across our district were merged on December 31 into one districtwide Federal land bank association to complement the one districtwide PCA.

The only major area left to complete is that of systems structure, as addressed in the act. The system committee is continuing its study of this issue and will report to Congress.

I would note that we in Omaha have taken the initiative and opportunity to join with the Spokane district in forging an operating alliance in which we can work together to either duplicate or to eliminate the duplication of services or otherwise save operating expense. We are already actively involved in a joint venture to combine computer and data processing functions and are examining other areas where we can share services to bring about cost reductions and take advantage of other efficiencies. We believe that this will continue our fourth consecutive year of reduction in operating expenses.

Thank you, again. And I'll stand ready to answer any questions later or about the additional material I've supplied to you.

[The prepared statement of Mr. Martin, with attachments, appear at the conclusion of the hearing.]

Senator **HARKIN**. John, thank you very much.

Next, Mike Thompson, director of the Iowa Farmer/Creditor Mediation Services. Mike.

STATEMENT OF MIKE THOMPSON, EXECUTIVE DIRECTOR, IOWA FARMER/CREDITOR MEDIATION SERVICE, DES MOINES, IA

Mr. **THOMPSON**. Thank you, Senator Harkin, members of the committee. I'm pleased to be here to speak regarding mediation and what it means in terms of the Ag Credit Act.

Initially, I'd like to start out by saying that what I think has happened with the Ag Credit Act is, it's positive. I think it's being slowly implemented in terms of a number of things.

I think in Iowa we tend to be fairly lucky. We have been able to implement a number of the sections with regard to mediation fairly rapidly. I regret to say that's not true in many other States that I've helped work in, in the last 6 or 7 months, that are having a very hard time implementing parts of the act with respect to mediation.

Probably the most important issue in terms of these other States is the absence of a neutral mediation service. Of the 50 States, only 14 have been been certified to perform mediation. In the other 36, that means FmHA people will have to facilitate something comparable to mediation. Obviously, that's going to be very difficult, because they are not perceived as neutral by the farm community. That's probably the first example of a neutrality problem.

The second example is that there are people who would like to be mediators, who are advocates of farmers. On the other end of the spectrum, that's just as difficult for the creditor community and FmHA, as an FmHA person knows.

The final level is where a mediator actually prepares the farmer and goes and sells the proposal or negotiates with the creditors. Those kinds of neutrality issues are abundant in many States trying to establish mediation programs. That's creating quite a problem in the country, and I think it's going to need further attention as to exactly what mediation is.

Beyond neutrality, I think one of the bigger issues that's left there is establishing a climate of resolution that's necessary to make mediation meaningful. Again, I think we've been able to do that in Iowa. It's evidenced by a number of things that have happened around the Ag Credit Act in 1982 and 1983, just to begin with. First, Farm Credit Services met. It was a meeting facilitated by our service in February of 1988 to work with creditors and to work with the borrower advocates and a number of congressional staffs to hammer out how the Ag Credit Act was actually going to be implemented in Iowa. I think that meeting took care of most of the major problems. We were then able to negotiate most of the disputes away on a macrolevel so that farm borrowers could actually get their rights implemented as early as February 1988.

Second, we saw something similar happen with FmHA. This happened in November 1988. I think we were able to work on the same level.

I think on another level of FmHA—and I think it reflects the 69 percent response rate to the FmHA letters that we have in Iowa—is that FmHA used the Mediation Service to send letters to borrowers, asking them to respond to this request to try to do debt servicing. They also were helpful in working with Legal Services on a similar letter.

So I think we have some pretty good opportunities in Iowa that haven't happened in other States. I think if we're going to make sense of the Ag Credit Act, we're going to need similar kinds of things to make it work.

On another level, I think we're going to need to train FmHA people to understand what negotiation and mediation really mean. FmHA staff, just like many borrowers, are just as confused about the Ag Credit Act as any of those people, and therefore, they're going to need to be trained to use the DALR$ program to effectively negotiate—not to create an answer, but to negotiate solutions that are meaningful in terms of trying to resolve problems. And again, I think that's going to be a matter of training and time.

I'm sorry to say that time is not available. Many of those people are going to be expected to negotiate in the next 2 or 3 weeks, and they have not done any actual negotiation. So FmHA, beyond some of the problems that people might have with them philosophically, are not going to be prepared to do the work they're going to be asked to do; and that's going to be a very difficult task, given the fact that they are just as emotionally embroiled in this dispute as many of the borrowers are.

I think there's a final point to look at in terms of what would make mediation difficult, what would make it easy. I think that's going to be preparing our farm community to work with the DALR$ program in establishing some way for them to realistically negotiate. That's going to again mean, what kind of money do we put into that? When you look at that from one final point, there's only 14 programs that have been certified this year, at a cost of $3 million for the Federal Government. If we take a look at next year, they're projecting from FmHA 22 programs, and they only have $2 million available. Obviously, that doesn't make a lot of sense, if we're really going to do much.

There's one other part to look at, for those 36 States that aren't certified. The Federal Mediation and Conciliation Service, a sister Federal agency, estimates the cost per case for outside mediators will be $1,000. If you take a look at that, even at 400 cases, you almost equal the match of $400,000 that Iowa is not even receiving.

So you have to think about that, that we're going to probably save money if we work to have more certified States and if we work with FmHA to get them to work on certifying States. I think that's going to be the critical thing, and that's going to mean having more money available in 1989-1990. And I think those are going to be the keys that are going to make mediation successful.

Thank you.

[The prepared statement of Mr. Thompson appears at the conclusion of the hearing.]

Senator **HARKIN**. Mike, thank you. I don't mean to interrupt with a question, but you said $1,000 a case. That's for the noncertified?

Mr. **THOMPSON**. That's for the noncertified. Our cost right now per case is about $200 in Iowa.

Senator **HARKIN**. I'll follow up on that later. I'm not sure I understand all that.

Mr. **THOMPSON**. OK.

Senator **HARKIN**. Randy Lanning, the executive vice president from the Wakefield National Bank in Wakefield, Nebraska. Would you mind informing us Iowans where Wakefield is?

Mr. **LANNING**. Wakefield is about 35 miles southwest of Sioux City.

Senator **HARKIN**. Oh, sure. A neighbor.

Mr. **LANNING**. Yes.

Senator **HARKIN**. Welcome. Appreciate you being here.

STATEMENT OF RANDY LANNING, EXECUTIVE VICE PRESIDENT, WAKEFIELD NATIONAL BANK, WAKEFIELD, NE

Mr. **LANNING**. Thank you. As I mentioned, Wakefield is located in northeast Nebraska 35 miles southwest of Sioux City, located in the extreme southern part of Dixon County. We have a population of about 1,100 people. The main employer is the Waldbaum Company, which sells fresh eggs and egg products both nationwide and internationally. The majority of farmers in our area maintain some type of livestock operation. We have a number of irrigated farms in our area, but the majority are dryland.

The Wakefield National Bank has assets of $16 million with loans of $7 million. Eighty percent of our loans are agricultural loans.

The farm crisis hit the Wakefield area extremely hard. In the winter of 1984-85, the Wakefield economy was devastated. There were days that winter when the entire Main Street of Wakefield was deserted. Local businesses would go sometimes an entire day without seeing a customer. Confidence in the future was at a low ebb.

At the bank, we had many problem loans, and we were concerned about the future also. In January 1985, we attended a Nebraska Bankers Association meeting where officials of the Nebraska office of the Farmers Home Administration explained their guaranteed farm loan program and encouraged us to take advantage of the program. We decided that day that the FmHA guarantee program was the solution for our bank and for our customers. We proceeded to obtain 57 separate guaranteed loans for 35 different farm customers, for a total of $5,500,000. At that point in time, our total loan volume was about $8 million. More than 50 percent of our loan portfolio is now guaranteed by the FmHA. I think we've looked at the FmHA guarantee program, maybe, differently than some banks have. Some banks have only used it for maybe a few problem loans. We have used it for almost all of our farm customers.

The FmHA guarantee program allowed us to restructure the customer's debt over a number of years, according to their cash-flow, and enabled us to continue to finance their operations. Without the FmHA guarantee program, many of our farm customers would not have been able to continue farming.

When we originally put those FmHA guaranteed loans together, we were concerned that a number of the marginal customers would not survive. However, a funny thing has happened along the way: Many of those marginal customers have made considerable financial progress and are now excellent bank customers.

The FmHA guarantee program forces the farmer to budget and monitor his costs. We believe the program has helped our customers become better managers.

We would recommend and encourage other banks to utilize the FmHA guarantee program to the fullest extent, and we hope that Congress continues to allocate funding for the guarantee program.

We are excited about the new Farmer Mac program. We have purchased stock, and we intend to be an originator. We believe the real sleeper in the Farmer Mac program is the rural housing program, and the next panel is going to be talking about rural development. And I think this may be a help for many communities. We feel there is a definite need for long-term, fixed-rate real estate loans in small rural communities. Such financing is almost nonexistent in many rural communities. However, we would make one recommendation: that the population maximum be increased from 2,500 to 10,000.

However, we are concerned about how bank regulators are going to be approaching the Farmer Mac program. We are hearing some things from our regulators that concern us about how they are going to look at the Farmer Mac programs, and we are concerned that some of the ways they are approaching it may hurt the program.

We have been involved in six chapter 12 bankruptcies. Obviously, from the bank's point of view, we have not been happy with the outcome. However, we have found that the process works fairly quickly. The problem we have with chapter 12 is writing down the debts to the value of the collateral with no provision for recovery if the value of collateral subsequently increases. In our area, the value of land has increased 20 percent over the past 2 years. We would recommend that chapter 12 be revised to allow banks to participate in this increased valuation.

We are very concerned about the drought in our area. Last summer, some of our areas received very little rainfall, and we have not had any rain this fall, and very little snow this winter. If the drought continues through the summer, we will face severe financial stress in our community next fall. We would encourage Congress to monitor this situation and to provide assistance if needed.

We are also concerned about the increase in interest rates. If rates continue to increase, we are concerned the farm recovery will come to a screeching halt.

Over the past 3 years, our farm customers have made considerable progress and barring a devastating drought, higher interest rates, or a recession, we are cautiously optimistic.

We have had an amazing economic recovery in the Wakefield area. There are days now when it's hard, sometimes, to find a parking spot on Main Street. We hope this continues. Thank you.

[The prepared statement of Mr. Lanning appears at the conclusion of the hearing.]

Senator **Harkin**. Thank you very much, Randy. Next I would like to call on Mark Baxter, a farmer from Rockham, South Dakota.

Mark, welcome. Thanks for being here.

STATEMENT OF MARK BAXTER, FARMER, ROCKHAM, SD

Mr. **Baxter**. Good afternoon. Until today, some of us farmers had forgotten that the system actually does work.

I am a farmer from Rockham, South Dakota, and a borrower of the Farmers Home Administration, now being considered for loan servicing under the Agricultural Credit Act of 1987.

I really appreciate this opportunity to testify here today. I'm glad to have the chance today to make my suggestions on how to improve Farmers Home Administration's implementation of the new Farm Credit Act.

I am speaking on my own behalf and for Dakota Rural Action. I am a member of DRA, which is a grassroots, citizens' organization that worked on the borrowers' rights and debt restructuring provisions that were included in the Agricultural Credit Act of 1987. We thank those of you on the Agriculture Committee for your good work in seeing to it that FmHA borrowers like myself have a chance to restructure our debts, when that is cheaper than the cost of foreclosure.

We are glad that FmHA has developed regulations in response to concerns raised by groups like ours around the country. We firmly believe, however, that had FmHA done its job to begin with and issued proper regulations in June of 1988, farmers like myself would have gotten our debt restructuring notices completed at a more convenient time.

I'll use my own case to illustrate some of these points. The reasons that I became delinquent were due to circumstances beyond my control, including a combination of low commodity prices, and FmHA's management decisions regarding my operation that caused me and FmHA to lose more money and value on security that we both owned. I'm leaving documentation on this with Senator Daschle, whose office has tried to help in the past.

First of all, FmHA's use of the DALR$ program and their determination of whether or not a borrower is eligible should be based on accurate, understandable figures. Farmers Home Administration should also explain completely the computations that they use in determining whether a borrower is eligible, and justify their figures before deciding that a borrower isn't eligible.

What happens in many cases is the cash-flow tells FmHA what situation the borrower is going to be put in. Many times what FmHA does is decide what situation they want that borrower to be put in and work the cash-flow backwards, and he's stuck there.

They have not done things, in my case, the way I feel that they should have. I applied for debt restructuring on December 27, 1988. I was called in to the county office on February 6, 1989, and told that I would receive exhibit E and Form 1951-S in 3 days. You will find this as attachment 1. I was also given the summary of the DALR$ program analysis of my application, attachment 2, and the figures that FmHA used in my Farm Plan, attachment 3, that appear to have been used in the DALR$ program.

There are many confusing things about this information. First of all, the figures that FmHA put into attachment 3 are not what I submitted. As far as I know, it's not even my farm. It's the County Supervisor's farm. I submitted a Farm Plan in my application, but what you see there is their Farm Plan. I was never given an explanation by FmHA as to why these figures were used instead of what I believe to be my more accurate picture. There are errors on this form, which I have highlighted, amounting to over $8,000 in income and $15,000 in expenses. Nowhere in my Farm Plan has there been factored in a tax liability.

Second, FmHA gave me a printout, which is attachment 2, that explains their calculations for the net recovery value of the property. This is confusing. I have been referred to mediation, through exhibit E, and I have not been given the opportunity to sit down with the County Supervisor to go over this printout or point out the differences in FmHA's figures against my own. These issues looked fairly cut and dried when I met with them on February 6, that these are the figures that they will use, and that's that. They did tell me that if I put more land in CRP, they would reconsider my application for debt write-down before I go to mediation.

I think that this is an arbitrary way of dealing with things. Why don't we correct the errors first in the plan that we have? DRA members in both Hamilton and Deuel Counties have reported that the FmHA officers are meeting with borrowers to correct mistakes for up to 4 hours at a meeting and going over the figures in DALR$ printouts before sending out exhibit E. It appears that FmHA is handling things differently from county to county.

Many FmHA borrowers are in the same boat as I am and afraid to rock it.

Excuse me.

Two, FmHA should conduct appraisals based on the capitalization value of the land, and, when using comparable sales figures, should clearly define what constitutes a comparable sale. [Crying.] I am really sorry for this. This is real difficult.

Senator **Harkin**. Take your time. Take your time. Have a drink of water. We aren't in that big a hurry.

Mr. **Baxter**. FmHA should also use consistent appraisal methods and give borrowers notice when they are conducting an appraisal. Finally, the FmHA State office and national office should set forth guidelines for County Supervisors to follow in selecting the independent appraisers by defining, in writing, what an independent appraiser is. We think that this is especially fair, since the borrower has to pay for an independent appraisal themselves. Right now it's up to the County Supervisor's jurisdiction as to the list that's put together.

In my case, it appears that the only figures that FmHA used to decide the value of my land were comparable sales, which is found in attachment 4. It was done 2 months before I applied for loan servicing. The form doesn't include any space for calculating the capitalization value of the land or other methods used in appraised property. I can't tell whether FmHA used any sort of calculation based on the productivity of my land in making this appraisal.

Also, when the contractor appraiser came to my farm to appraise my machinery, they represented themselves as not working for FmHA; but at the end of the appraisal, the appraiser asked me if I had any funds that needed to be collected for Farmers Home Administration. I question why any contracted appraiser is collecting funds for Farmers Home Administration.

Third, the Farmers Home Administration should carry out the notification requirements in the Ag Credit Act simply, and without confusion.

The Ag Credit Act gives borrowers 45 days to state in writing that they want loan servicing. It doesn't tell FmHA that all forms must be obtained within 45 days in order for them to consider a loan to be eligible for servicing. However, FmHA has managed to confuse what should be a fairly simple process.

According to the director of farm programs in South Dakota, at the FmHA office, loan servicing packages were sent to 1,646 active delinquent borrowers in South Dakota. Responses were received from 1,199 active delinquent borrowers. This leaves between 321 and 350 borrowers in South Dakota who either did not respond at all or who were determined by County Supervisors to be ineligible. [Crying.]

Senator HARKIN. Take your time, there, Mark. Just take your time.

Mr. BAXTER. If you are one of these people, contact DRA as soon as possible.

There is no consistent criteria used from county to county to determine eligibility. Much of this confusion could have been avoided if FmHA simply would have followed the intent of Congress. As borrowers, we are trying to work these problems out at the county and State level, but we feel that we need to resolve some of these problems in Washington. Your help in working with FmHA to correct some of these problems is appreciated. Ask me about cash-flow problems.

Thank you for this opportunity.

Senator HARKIN. Thank you, Mark. Thank you.

[Applause.]

[The prepared statement of Mr. Baxter appears at the conclusion of the hearing and attachments 1-4 will not be part of the printed hearing record.]

Senator HARKIN. You have a lot of support here, Mark.

Now, last, Gene Severens, Center for Rural Affairs, Walthill, Nebraska. Gene, welcome again today. I know you have testified before the Senate Agriculture Committee on previous occasions. Welcome again.

STATEMENT OF EUGENE SEVERENS, CENTER FOR RURAL AFFAIRS, WALTHILL, NE

Mr. **Severens**. Thank you very much, Senator Harkin, Senators Daschle and Kerrey. I'm Gene Severens from Walthill, Nebraska. I'm pleased to have the Senators here so close to our home. Walthill is 25 miles straight south of Sioux City, Iowa.

Time limits will not allow me to cover all the details of each of the six major areas I would like to cover in my testimony, so I have included some supplemental materials that cover a lot of these points. I would like to take this opportunity to let you know that these materials were jointly prepared by Jerry Hansen, Nancy Thompson, and Annette Higby, as well as myself.

The six areas that are touched upon in my testimony, or at least in the supplemental material attached at the end, include:

First, the sale of FmHA farmland inventory; second, sale of FCS farmland inventory through the demonstration project; third, FmHA participation in mediation; fourth, problems in FmHA's previous owner's buyback program; fifth, tax problems associated with the 1987 act; and finally, the role of agricultural credit in rural development strategies and the future of Farmers Home Administration.

I would like to spend most of my time talking about the first, second, and sixth topic; not to say that the others aren't important, but simply that there's not going to be enough time to touch on all of those. There is supplemental material, as I indicated, providing some information about those other three points.

SALE OF FMHA FARMLAND INVENTORY

First, as far as the sale of FmHA farmland inventory, the sales have begun, at least in Iowa and Nebraska; and thanks to the 1987 act reforms, the principle that family size farmers and ranchers should have the first crack at buying this land has been firmly established and, I'm happy to report, incorporated into FmHA regulations. Preact abuses of sales to investors and other ineligible land buyers appear to have been cut off.

As a result of this form, we estimate that nationwide, some 8,000 new farming opportunities for beginning and reentry farmers will be created over the next 4 years. In some States in the Midwest, the number of FmHA farmland parcels averages three to four farms per county, so that this inventory resale will have a substantial impact on the land tenure patterns and on the local economy. These targeted sales will go to farm families who otherwise would not be able to afford these purchases, and their entry into rural communities will provide a permanent spark to the economic development of those communities.

This single, little-noticed reform, lost amidst the other issues in the 1987 act, will become the biggest redistribution of Federal farmland since the Homestead Act. And, to anticipate item 6 below, this redistribution policy is a major rural development strategy badly needed in this part of the Midwest.

JOINT FCS/FMHA DEMONSTRATION PROJECT

Second point is on the joint FCS/FmHA demonstration project.

The results of the demonstration project for the sale of FCS inventory farmland continues to have many problems. These have been discussed in our testimony before this committee on June 16 and September 30, 1988. The members of this committee, along with Senator Exon of Nebraska, have been involved in helping to resolve these issues. Ongoing delays by FmHA, the FCA, the FCS Assistance Board, and the certified district banks have frustrated the implementation of this program as each agency seems to take turns blaming the others for the program's problems. In all this process, no one has faulted the concept or mechanisms of the law. They simply aren't able to get the job done.

In the Omaha district, recent aggressive marketing of inventory, without the use of the program, have drastically reduced the potential of the program in the four-State area [IA, NE, SD, WY]. The Omaha district gives the public appearance of being enthusiastic about the demonstration project, and you just heard Mr. Martin say that, just a few weeks ago, they made the first demonstration project sale in the country. We applaud that, but want to note that this was only after they had sold off the bulk of their inventory land during the 1988 sales efforts, thereby reducing the full potential of the program.

There is considerable potential for the demonstration project in the St. Paul district [MI, WI, MN, ND], and theoretically in the Jackson Federal Land Bank [AL, MS, LA], which is in liquidation.

I would like to skip over to point 6.

THE NEW FMHA AND RURAL ECONOMIC DEVELOPMENT

For thousands of rural communities that blanket the Great Plains and western Corn Belt, agriculture is the main resource base and should play a critical role in the task of revitalizing these economies. It's surprising, therefore, that the words "agriculture" and "rural economic development" are rarely spoken in the same breath.

I might depart here to note that I—you know, even today we have two separate panels. One deals with agricultural credit; another deals with rural development policies. That, of course, helps us put a handle on it; but I think it's important to make the point that these are integrated together, that agriculture credit policies are a part of rural development, and for a truly synthesized approach, we need to be looking at these together.

We believe that agriculture can be the foundation for rural economic development in this region if it is reformed to be more sustainable and more equitable. This point and others are discussed in our organization's Special Report on "Rural Economic Development: Agriculture and the Rural Community," which is attached to my testimony, and I would recommend it to you [attachment 2].

The point simply is that we believe that much more value can come from agriculture. More value from agriculture can be generated and retained in the rural economy through a number of practices, such practices as more diversified crop and livestock operations; the use of low-input agriculture techniques; small-scale value-added processing and input manufacturing, both on and off the farm; and more food production and processing for local and regional markets. This type of economic development complements and builds on the agricultural base and economy.

In light of the experiences of the farm crisis, we need to conduct a comprehensive review of Federal agricultural credit policies. At the same time, we need to review how these programs fit into a larger policy of rural economic development. This will be no easy effort, but in the farming-dependent communities of the country, the integration is critical.

WHAT WENT WRONG

I would like to give a few sentences of history as to what we think went wrong with Farmers Home and why we think that Farmers Home needs to be drastically revamped, and that this committee is the committee that ought to be doing it.

In the 1970's, FmHA policymakers lost sight of the relationship between FmHA's farm lending programs and the rural economy. The original vision and mission of FmHA was to use small loans as a catalyst for creating and maintaining new farming opportunities for small, family-size farms which could not get credit elsewhere but which would eventually graduate to commercial credit. In short, FmHA, as the lender of last resort, created new business opportunities on the land that would not have otherwise existed. This was inherently an economic development strategy that percolated through the entire economy.

Unfortunately, in the 1960's and gathering momentum in the late 1970's, the agency, policy by policy, became the lender of least resistance which would provide ever larger loans to protect large, expanding operations from risks of their own bigness. Multimillion-dollar loans to a number of operations is well documented. We can learn a lot about revamping FmHA credit programs by reviewing these past mistakes. We think the two major problem areas have been:

One, the emergency loan programs [both Emergency (EM) and Economic Emergency (EE)] suspended individual loan ceilings and eliminated the family size farm requirement, throwing those programs and the Federal Treasury open to multimillion-dollar operations.

Two, we also think the shift to guaranteed lending is a mistake that has redirected appropriations to bigger, more established operations; creating new operations are simply not reached by guaranteed lending.

We at the Center are developing programs for a new FmHA that will do three things: restore the agency's original modest purpose; integrate FmHA farm lending as a consistent part of rural development strategy; and incorporate carefully designed controls to protect the Federal investment from the kind of abuses and losses FmHA has experienced since the late 1970's.

This work is still developing, but I wanted to mention one of the new components today, what we call downpayment loans. These loans would be specifically designed to link beginning farmers with retiring farmers who, demographically, represent a growing proportion of farmland owners who will be selling property in the near future. Attachment 3 to my prepared testimony provides a column about somebody who describes this demographic feature that we're on the verge of. This approach would facilitate seller financing with FmHA's role, providing the eligible borrower with downpayment assistance. FmHA loan funds would go about five times further, because FmHA would be providing approximately 20 percent of the financing rather than the current 100 percent of the financing under the current Farm Ownership [FO] loan programs.

Mr. Chairman, this is one of the ideas we're working on. We look forward in the future to working with this committee in developing this idea and other ideas. Thank you very much for this opportunity.

[The prepared statement and attachments of Mr. Severens appear at the conclusion of the hearing.]

Senator HARKIN. Gene, thank you very much for, again, excellent testimony, as usual.

Thank you all for being here and submitting testimony. I have one testimony—there was one person missing. The attorney general of the State of Iowa, Tom Miller, was going to be here; and I guess, again, they had snow problems in Des Moines. So without objection, I'll submit his testimony in its entirety in the record.

[The prepared statement of Thomas J. Miller, attorney general, State of Iowa, can be found on pages 96 to 97.]

I will start first with Dr. Duffy. You talked about the current situation in agriculture. If I can find a copy of the prepared testimony you said that in 1987, over 18 percent of Iowa's gross farm income and over 70 percent of the net farm income was direct Government payments. U.S. agriculture—for all of U.S. agriculture, direct payments were 10 percent of the gross and 36 percent of the net farm income. That's correct, right?

Mr. DUFFY. Yes, sir.

Senator HARKIN. Are these good, solid figures?

Mr. DUFFY. USDA estimates.

Senator HARKIN. USDA? [Laughter.]

Senator DASCHLE. What else have you got?

Mr. DUFFY. These are the numbers that were reported in their September ag finance situation and outlook report.

Senator HARKIN. To sort of set the stage for some of the rest of the questions we're going to get to on restructuring mediations and problems we're having here, let me read you the following statement from President Bush's budget recommendation.

Quote, "Currently, the farm sector is on the rebound. Farm incomes have been rising and have now reached record levels. Prospects for continued improvement are good. Farm subsidy payments will decline in 1990, but further decline is possible with reform," close quotes.

Again, we received the budget on Friday morning. If I am not mistaken, we looked at it, and the recommendation that—for example, just in corn—I didn't look in wheat, Tom, but the corn target price was cut by 23 cents a bushel. In the program, it was 9 cents. It will go down 9 cents a bushel from the operation of the 1985 farm bill. The budget calls for it to be cut 23 cents a bushel. If you look at the amount of corn that we plant in Iowa, figuring about an average of what, 117 bushels an acre, we figured up roughly that it would be about $312 million out of the Iowa economy, and an average of about $27 per-acre reduction in income for farmers.

What would that do to our economy, if that were to go ahead?

Mr. **Duffy**. This was the point that I was trying to make when I brought that up, Senator. I think that the recovery that President Bush alludes to is a false one, and that it has been a recovery that has been based on these payments, and that if the payments get reduced, you're going to see a lot more of the problems that we saw in the early 1980's come back to the forefront.

Off the top of my head, to say exactly what the numbers you had and the impact that would have, I really wouldn't want to say. But I think the point, though, is that we have to be aware of what's going on and the level of support that is there.

Senator **Harkin**. Randy, you're a banker. You heard these figures. I mean, I'm not saying they're valid, but I have a sense that they're close to the ballpark. You said the economy in Wakefield, Nebraska was coming back, you can't find a parking spot on Main Street. Are you in corn country?

Mr. **Lanning**. Yes.

Senator **Harkin**. What would happen in your area if farmers lost $27 an acre next year off their income? Is that net income? Gross income? Net income? Be net income.

Mr. **Lanning**. It would be devastating. If it was over a period of years, then maybe you could make adjustments.

Senator **Harkin**. Adjustments to it.

Mr. **Lanning**. One year, that's a pretty big cut.

Senator **Harkin**. So perhaps some of the farmers who are making payments on their loans right now would find it pretty hard to do, if that was to happen.

Mr. **Lanning**. I would think so.

Senator **Harkin**. Let me ask Dr. Duffy one last question. Last year's drought—and the rest of you keep this in mind—and if any of you want to chime in, if you have a question—and I'm sure many of you do—we have some problems—you go ahead, speak up.

How have the credit needs of the farmers been affected this year by last year's drought?

How did the drought last year affect the credit needs of farmers this year? Because of the drought last year, what has that done to credit needs this year?

Mr. **Duffy**. Well, there has been a lot of changes, I think, that we see. Costs of production have increased in 1989. We also see more land coming into production, so we're seeing an increase in the demand for credit. Last summer's drought, a lot of the bins that contained grain were emptied at the higher prices, and then we're coming into this year without those bins being full. So I think that for many of our operations, we're going to see an increase in the demand, although I might add that as of the end of September, in the Seventh District for the Federal Reserve Board, I believe it was only 8 percent of the banks had loan to deposits above the desired levels, so that the funds were there.

Now, how much it's going to take to get the crop in is going to depend a lot on the individual circumstances; but as I indicated, our estimates for costs of production are up 10 percent overall, and we're also going to see more land in production, so there will be more of a demand for credit.

Senator HARKIN. Randy.

Mr. LANNING. We found in our area that the—we did have a drought. The drought was fairly severe in our area. However, we have found, with the increase in prices, that most of the operations are going to come out about the same in 1988 as they did in 1987. We had a couple of good years in 1986 and 1987, so they did have some recovery. So I don't think there's going to be a large increase in credit need this year. However, we are very concerned about if the drought continues this year.

Obviously, it was not good; but most of our customers, the income has held up pretty good because of the increased price of the crop. But we are very concerned about a continued drought in 1989.

Senator HARKIN. I guess both of you have said there was—while agriculture has gotten better, the income has gotten better, you pointed out it's due a lot to direct payments. So what do you say? Kind of precarious, I mean, depending upon weather and depending upon Government payments?

Mr. LANNING. Yes.

Senator HARKIN. Well, that leads me back into the Farm Credit System. John Martin, I again welcome you here. I said this publicly before, that I believe the Omaha Farm Credit System has done a good job in addressing these needs, and I think that you and your people down there have moved ahead very aggressively to implement some of these provisions.

I have some concerns about some language that is in the agreement with Farmers Home on the demonstration project. One of the chief concerns about the demonstration project is it took so long to get it going, over a year to get the darn thing going. Now the first sale has been made. It was made in eastern Iowa, if I'm not mistaken, a farm in eastern Iowa, so I hope the program will really move ahead aggressively.

Chiefly, because of the delay, however, there is much concern that the Farm Credit System inventory land may be in such short supply that few buyers will be able to participate in the program. My first question is, what is the present availability of inventory land in the Omaha district that would be eligible for the demonstration project?

Mr. MARTIN. If I could, Senator, I would like to relate it, although I mentioned in my testimony: 280,000 acres of property, approximately, at the end of the year in inventory. If I could, there were approximately $85 million of property at the first of the year available for sale. At the end of the year, that inventory value that we had was approximately $65 million. So during the year, we sold $320 million of property.

So although I appreciate very much Gene Severens' concerns, my view is that the property that we have today is only a portion of the property that is available as we restructure loans, which, although we have restructured quite a few, we unfortunately have a few more.

And I would also add a degree of concern, as we look forward into this year, on the impact of continued dryness on the degree of loans that we already have restructured and the distress that they would put those loans in. But in terms of property, we would anticipate having in excess of $150 million of property through this year for sale. Now, that also can increase.

Senator HARKIN. You had $65 million in inventory land as of the end of the year?

Mr. MARTIN. Approximately, yes.

Senator HARKIN. Where is the other—you said you're going to have $150 million by the end of the year.

Mr. MARTIN. As we restructure loans through the year, part of that restructuring process normally provides acquired property as farmers downsize their operation or, unfortunately, in a few cases where we receive the property in foreclosure.

Senator HARKIN. I think there's a lot of concern and I have to tell you this. How do you answer the suspicions, charges, of some people that the Farm Credit System hurried off and sold a whole bunch of this land last year before we could get the demonstration project in, in place? Again, I'm not blaming you for dragging your feet. It wasn't you that was doing it on the demonstration project. But during this time, a lot of this—you pointed out, 280 farms, did you say you sold off? $320 million?

Mr. MARTIN. $320 million.

Senator HARKIN. Of land that, hopefully, I wish would have been available for the demonstration project, but now, obviously, is not. So what do you say to someone that says, "Well, they went ahead and just sold off all that land to get away from being involved in it"?

Mr. MARTIN. Well, first I would absolutely like to say that our involvement in the demonstration program and our commitment to participate in the program is, without exception, one of the main concerns that I have in the coming year. The difficulty of having the program available was not of our choosing. We very much would have liked and, in fact, asked to do whatever we could to accelerate the availability of the program.

However, we also have a responsibility to our stockholders and our members to have our organization operate to minimize the financial drain that we have had. We, as I mentioned in my testimony, have financial assistance that has been provided to us through the Financial Assistance Board and Financial Assistance Corporation. We have an obligation to pay that money back, with interest; and to do that, we have to operate our organization to generate profit, to provide credit in a sound and constructive manner. And we think it is incumbent upon us to not have $320 million nonearning assets in our organization that we, in effect, have to pay interest on.

Now, what we have tried to do and have been very, very active in doing is selling that property. We have sold it, financed a lot of it, over 80 percent of that property—90 percent, if you exclude rural home loans, go back to family farmers. The size of the property we have sold, we have consciously kept the property parcels in small portions. In Iowa last year, the average size of the property we sold was under a quarter section. It's like, approximately, $140,000, I believe. We have consciously tried to provide this property in a manner in which family farmers can have acquired——

Senator **Harkin**. I just want to talk about the demonstration project. I just have a couple more questions. I reviewed a copy of the Omaha district's policy on the demonstration project. As I understand, the policy that the Omaha district will allow a prospective demonstration project buyer an initial 30-day marketing period to make an offer and arrange financing through Farmers Home. Thirty days. If the buyer cannot close the transaction at the end of the 30-day period because of delay in processing the Farmers Home paperwork, an additional 30 or 60 days can be obtained for closing, through the payment of a fee to Farm Credit Services of Omaha of 1 percent, if it's for 30 additional days, or 2 percent, if it's for 60 additional days.

Now, let me put this in layman's terms. If you have a farmer out there that might be able to qualify under the demonstration project, they go to Farmers Home. Farmers Home—they have 30 days. Farmers Home, they get this paperwork; they start filling it out. Now, if the 30 days runs and you say to the farmer, "OK. We'll give you an additional 30 days. You have to pay an additional 1 percent fee. Or we'll give you 60 additional days, and you pay a 2 percent fee."

My question is, No. 1, will Farmers Home be able to process that paperwork in 30 days? And is it reasonable to charge the prospective purchaser a fee when the delay is not under his control?

Mr. **Martin**. The issue of the fee, if I could, I would like to step back, on a normal marketing process, is to have the property available for a minimum advertising period of 30 days, assuming that we're not discussing former owners and their rights under the act. Then, if somebody would like to acquire the property and make an offer subject to the demonstration program, we believe that 30- to 45-day period is a time period which Farmers Home has indicated generally they would be able to be responsive to.

We have clearly provided our farm property people in the field the discretion, based upon the source of the delay, and recognizing that we're having a new program up and running, that if the delay is not on the part of the borrower, it's on the part of the Farm Credit or Farmers Home processing delay, we're not imposing that or plan to impose it.

However, what we are trying to do is to have a program that we can have an ending on. Now, that is, again, adjustable, based on how the program develops. What we hope is that we will have a lot of property and we will have a number of these programs or sales under the demonstration program, but again, we will adjust our process to meet the realities that we find as we go forward. We are not locked into any particular process. We're locked in and committed to making something work.

Senator **Harkin**. Sir, my last question, then, is, what happens if, at the end of the 30-day period, the demonstration project buyer has made the best offer but cannot close because of Farmers Home delays and can't pay the fee? What would you do? Will you work with Farmers Home to try to set a reasonable length of time to extend it to get that paperwork done?

Mr. **Martin**. If we believe that the prospective buyer has forthrightly provided financial information and has a reasonable basis that we believe Farmers Home will earnestly consider the application and that they have started the process, we very likely would give an extension. I would be remiss if I gave you a blanket statement, because we try to address these on a case-by-case basis. Our intent is to sell the property on the Farmers Home program, if at all possible.

Senator **Harkin**. Thank you very much. Thanks for your indulgence on the questions. I appreciate it.

Senator Daschle.

Senator **Daschle**. Thank you. I know we have another panel, and there's many questions that we also may want to ask the audience, but I have a couple of questions that are very basic.

I would like to ask each of you to, if you would, to respond by providing me with a numerical answer from 1 to 10, 10 being the best, 1 being the worst.

How do you think the Farm Credit Act is working, and how do you think it's being implemented? And I would also like a brief explanation as to why you've given it the number you have.

And I'll start with Mike Thompson.

Mr. **Thompson**. OK. I'll take that on two different levels, then. The first level is with Farm Credit Services, and the second level is with FmHA, in terms of implementation.

I think the Farm Credit Services in Iowa—and I'll speak of Iowa, and then I can talk later of others—I think it's being implemented somewhere around 7. I don't think it's perfect, but I think they are making the effort to make it work.

I think with FmHA—I don't think we can give it a numerical ranking, because nothing has really happened at this point in time, I don't think due to the fault of what's happening in Iowa. I think when I try to compare that, again, on a split level, I think in Iowa, we'll probably see something comparable to what FCS is doing. I think in other States we'll see something much lower. I think we'll see some people down at ones or twos. And I think part of the reason why is because the DALR$ program is a financial program.

What we're dealing with is not just finances. We're dealing with people's lives and their emotions. And when you deal with those emotions, you have to find some way to negotiate through them to get to that DALR$ program; and I think when you see only 50 percent of the people responding to this FmHA letter, what you're dealing with is people who are paralyzed.

Senator **Daschle**. So you'd give it a 7 overall.

Mr. **Thompson**. I would give it—no. I would say in Iowa. I can't say over all the country.

Senator **Daschle**. No, no. I mean in Iowa. What is——

Mr. **Thompson**. I think we'll get to that point, yes. We'll get to that point.

Senator **Daschle**. OK. Gene.

Mr. **Severens**. Well, one of the problems of that question for me is that Farmers Home—one of the things we've noticed about Farmers Home, going back for the 10 years or so that we've been monitoring them, is that in fact they're a very decentralized agency. They operate quite differently from one State to the next. You might have to sue Farmers Home over inventory sales due investors in Nebraska, while in Iowa they do a better job.

I think when you talk to other people, you'll find there is a lot of discrepancy in the way State agencies—State Farmers Home offices deal with this. And in a way, it raises some equity issues in my mind, in the sense that farmers in similar circumstances end up being treated differently, depending on what State they're in.

You see a little bit of the same problem in the case of the Farm Credit System. It's in some respects even worse, because there is no Federal oversight agency that is providing a centralizing function. The district banks go their own way in developing policies. So how the Omaha bank develops a demonstration project may be quite different than how the St. Paul bank does. The same for borrowers' rights. So you're always having to shuffle around, and so it's really hard to come up with a number. I'd almost rather give those numbers on a State-by-State basis or a district-by-district basis.

Senator **Daschle**. Well, but just weighing it all together, which is what we have to do from a national point of view, what would it be? Five? Six?

Mr. **Severens**. For the entire act, with everything lumped together?

Senator **Daschle**. Right.

Mr. **Severens**. I thought the Senate—I thought Congress had a little more delicate scalpel than that. [Laughter.]

But I guess I would take five.

Senator **Harkin**. I see.

Man in Audience. Three or two.

Senator **Daschle**. Mark.

Mr. **Baxter**. Although it's a little too early to tell if it's working and how it's being implemented, I would say probably, so far, I would give it a three. I have the first DALR$ computer program printout that we can find, and it's really a mess.

Senator **Daschle**. You give it a three?

Mr. **Baxter**. I give it a three. The problems I have with it is, this is a 10-year plan that's being developed on a 1-year Farm Plan that has mistakes in it, and it has no room in it for any capital expenditures, a natural disaster, or the tax consequences. And I'll give it a three because FmHA can make this work if they want to; and in cases where they don't, it won't work.

Senator **Daschle**. Do you agree with what Gene just said, that the implementation seems to be very diverse from one State to the other?

Mr. **Baxter**. From one county to the next.

Senator **Daschle**. One county to the next.

Mr. **Baxter**. The County Supervisors have almost—nobody—there is not a well enough understanding, and State supervisors or State Directors probably need to be mailing out, you know—there needs to be a policy that everybody follows, and it's just kind of a problem.

Senator **Daschle**. Randy.

Mr. **Lanning**. From the perspective of our bank—community bank and our community, I'd have to give it an eight.

That's strictly from our perspective.

Senator **Daschle**. That's all you can do.

Mr. **Martin**. I also would have a certain perspective, but I would think that generally, as it pertains to the Omaha district, FCS, I would put an eight.

[Boos from the audience.]

Senator **Harkin**. Mike.

You'll have your chance later. Sounds like we'd get a different evaluation if we opened it up.

Mike.

Mr. **Duffy**. In Iowa, I think I'd give it about a seven. I think there's been problems, but overall, I base that primarily with the willingness of the FmHA and FCS to work with us to try to get the word out. We'll have to wait to see on some of the implementation, but it's been, overall, pretty good.

Senator **Daschle**. That's a 49 out of 60, by our panel here. I don't know what that averages are. Probably about a seven overall.

Let me ask you this question: If we see current rates of interest continue to jump as they did last week and given that the prospects of another 1 point are better than even according to some experts, what does that do to this whole situation? What percent of farmers, in your view, would be detrimentally affected by that?

Mr. **Duffy**. All those that have to borrow money.

Mr. **Lanning**. The interest rates really scare me. I think we've talked about the drought and some other things, but the interest rates going higher scare me more than all of these things.

Senator **Daschle**. I'm trying to get a better evaluation. Please give us some appreciation for the impact that these interest rates are having on farmers right now. I have the same concern and I wonder just how far we can go up the interest scale before we see the same situation we saw 3 or 4 years ago, where farmers simply can't tolerate the cost of money and ultimately fall back into the precarious position that they were in just a few years ago.

Mike.

Mr. **Thompson**. Well, I think you're going to look at the debt service increasing because of that, and I think one-third of our farmers are vulnerable—probably extremely vulnerable—to that kind of increase. Probably 15 percent beyond that could be vulnerable if it goes up much more. So I think you're going to have one-third of the people pretty vulnerable if you just start moving it up; and again, it depends on all their operations.

Senator **Daschle**. One-third of the people——

Mr. **Thompson**. Will be vulnerable.

Senator **Daschle**. Will all these fall back into a condition of an extraordinary vulnerability?

Mr. **Thompson**. They're going to be vulnerable.

Senator **Daschle**. If interest rates go up, they will be vulnerable. Does anyone challenge that?

Mr. **Lanning**. I don't know. I think I would agree with one-third, maybe even more. But I think, more importantly, that at some point here—and I don't think maybe we've quite reached it yet, but we're very close—is that those farmers—maybe they don't buy that bunch—that next bunch of cattle. Maybe they don't purchase that tractor. They don't purchase a TV, you know. It starts to affect their decisionmaking on purchases.

Senator **Daschle**. So what you're saying is one-third of the farmers could be in big trouble if these interest rates go up any higher.

Mr. **Lanning**. [Nods head yes.]

Mr. **Martin**. Senator, if I could, I would add to that. This morning I had a conference call with the four presidents that are responsible for branch lending functions in the Omaha district. In that conversation, several of them discussed with me that they had reviewed recent—in the last 30 days—cash-flow expectations of generally well-financed, well-capitalized people, primarily involved in the livestock operations, and those generally were very marginal profits to break-even-type cash-flows.

So I would add, although I don't agree with the percentage figures that Randy had mentioned, or Mike, a different perspective would be that if it would go up 1 or 2 percent in terms of general agricultural credit, if it is well capitalized, ranchers and farmers have a hard time cash-flowing. Then I think you could see the impact on those who are more highly leveraged as a result of past difficulties in the last few years, restructured, whether they be Farmers Home or Farm Credit or commercial bank. Those restructured loans are in some jeopardy.

Senator **Daschle**. Well, I know that Senator Kerrey has to leave here soon, so I will yield my time to him.

Senator **Harkin**. We might have some questions to submit to you in writing.

Senator Kerrey.

Senator **Kerrey**. Well, I would like to ask the panel to respond, if you would like to, to my sense of the situation. And I've been in situations before where instincts told me that something bad was about to happen; and I think that we're in that situation.

I think it's impossible for the Farmers Home Administration to process the applications that they already have, let alone the additional 10 to 15,000 they are likely to receive in the next couple of weeks. It's impossible. They have to mediate 24,000, plus another 10,000.

Tell me, Randy, how much time does it take to mediate one? And you don't like mandatory mediation. You're going to slow it down a little bit and have voluntary. So now we have voluntary mediation in the State of Nebraska. How long does it take to mediate one? I mean, if it's impossible to get the job done, I think, Senator Harkin, one of the things that should be an outcome of this hearing is that we need to put the Farmers Home Administration on notice that they either must submit a plan to get the job done, or we will have to find some way to get it done in the absence of an FmHA plan.

And I'm very nervous, with all due respect for the Farmers Home Administration individual here from Iowa, Mr. Haegele—that they are not going to have the capacity to do it. Farmers Home developed this preposterous thing called a "rule of reason" that establishes what one has to meet in terms of a threshold in order to be eligible for the program in the first place. The threshold is that borrowers must fill out a pound and a half of documents in order to be eligible. That was what they called a "rule of reason."

If that's the conclusion that that bureaucracy draws, given the task of trying to accelerate this thing—it is the 13th of February—I think it's functionally impossible. I'd like to hear from the panel if anyone on the panel thinks that the Farmers Home Administration can process the paper that they currently have within a reasonable time period.

Mr. **BAXTER**. When I met with my County Supervisor at this meeting we talked to, he informed me that he'd only be in the office 2 days a week from now on. I'm from one of the smallest FmHA work load counties in the State, so he has his work done. That's the reason I probably got my form ahead of anybody else. There was a rush for him to get done, and he's been sent to the next county to the south to help them, because he told me he don't think they will get the forms completed on time. So he's in the next county south, helping them.

Mr. **THOMPSON**. We have a little experience with that. At least, Farm Credit in 1986 gave us 1,500 cases in about a month. Now, one of the things we found out was, they couldn't handle that, so they were retreated and seeing what really could be done.

I think you're going to see that the timeframes are going to be extended. Now, that could be positive or negative, and the positive part is it may give people a little more time. The negative part is the people have to figure out how to get into planting season. So I don't think we're going to meet the timeframes the way people are talking about. And I think that's the flexibility we have to have to make mediation and/or negotiation meaningful; and that's going to mean that Farmers Home people need to really have the appropriate kind of training so they can sit down and do this.

And, you know, when he talks about 2 days in the office for Farmers Home folks, I think that could happen. That means they're not going to be employed in making good decisions. I think that's why they want to rely on the DALR$ program, which, again, I have some doubts as to whether it's a perfect program.

Senator **KERREY**. Randy, I would appreciate your comment on it, since you've had a pretty good record with the operating loan portion of Farmers Home Administration.

Mr. **LANNING**. Well, I think—just the numbers, I don't think there's any way they can get through all the numbers. Again, I can only speak for our area. In our area, I think the job will get done. But obviously, nationwide, with the numbers, I don't think they can. But in our community, I think we must be lucky. I think the job will get done.

Senator **KERREY**. Bob Haegele, I think, is out there somewhere. Is Bob here? Do you want to defend yourself or comment? I mean, I don't want to cost you your job, but, I don't know how Farmers Home physically can get it done. And I hate to go out to people and say, "Gee, I just participated in this terrific hearing, and I think everything is going to be OK," when actually, particularly given what Senator Harkin has pointed out, we're likely to take a cut in income, in addition to an increase in expenses coming from increased interest rates.

What we ought to be doing is saying, "What's the job," and, then say "let's get the resources." Whether it's Government or private-sector resources, I could not care less. But let's get the resources in there to get the job done.

STATEMENT OF BOB HAEGELE, CHIEF OF FARMERS PROGRAMS FOR IOWA FARMERS HOME ADMINISTRATION, DES MOINES, IA

Mr. **HAEGELE**. Well, as you know, a lot of the timetable frames were put in the legislation. So that's part of the logistic problem that we're trying to cope with. We think we're going to get a good share of it done in this timeframe. The thing that may compound it is that there's going to be a lot of guaranteed loans that are coming in, because the new regulations for the guarantee program are coming out—the demonstration program, for instance, coming to the forefront. And we are going to have to have some time.

But we have been gearing up for this thing and we've been working on it, and we've been doing a lot of outside contracting in order to get some of the things done.

Again, that sometimes presents you with a problem here and there. I think Mark mentioned something about appraisals. Contract appraisers sometimes do not understand everything that we have to deal with.

But the agency is going to do its darndest, and I think a good share of them are going to be done. The timeframe that—I appreciate the pound and a half of paper as you were talking about. Some of that was as a result of one of the advocacy groups writing the form so that it was on a more readable basis of understanding. Now, that doesn't mean a pound and a half return. That means a pound and a half was delivered so they could get full information. But it looked formidable as heck.

Senator **KERREY**. Yes. Oh, yes, it did. It's hard to look at the application pile and say, "This is what I call a 'rule of reason'."

Mr. **HAEGELE**. I hear you.

Senator **KERREY**. Consider the 24,000 applications submitted. One of the witnesses that appeared before a hearing in Washington that Senator Harkin and Senator Daschle and I were at, one of the witnesses that was there did that for us, acknowledged the 24,000, without accepting the possibility there could be another 10 or 12,000. The Farmers Home Administration should do what I would consider to be the reasonable thing and extend this deadline somewhat. But just take 24,000, and Randy, give me the amount of hours that you think it would take to mediate one.

Mr. **HAEGELE**. We would hope that a good share of these would not go to mediation. I don't contemplate that we're going to have a huge number of them going to mediation, that we would get them worked out short of that.

Senator **KERREY**. But has the Farmers Home Administration taken a look at the work that's sitting there in front of them and said, "Can we get the job done?"

Mr. **HAEGELE**. It's a big mountain to work on.

Senator **KERREY**. No, no. Yes or no.

Mr. **HAEGELE**. There has been a lot of time spent on that. I was at a meeting in San Antonio where there was a special group who worked on that as to how, and it has been addressed, and we had a teleconference on February 1 as to things that could be done, and that's been discussed and discussed and discussed. But it's still a big job.

Senator **Kerrey**. Please understand that, if your answer is no, what I'm trying to get from the Farmers Home Administration is for them to say to Congress, "You have to give us this, you have to do this, this, and this in order for us to be able to get the job done." That's fine. But don't wait and then, after it becomes a mess, after we go beyond all the planning decisions being made right now, say, "Gee, if we'd have only done such and such." Now is the time to do it.

Mr. **Haegele**. We're making adjustments within the State, and so forth. All I can speak for is the State of Iowa. I get in enough trouble down in my area. You need to talk to Washington about that particular problem.

Senator **Kerrey**. Well, you tell me, Gene. What do you think?

Mr. **Severens**. About the amount of time it would take mediations to go through all the debt restructurings?

Senator **Kerrey**. Yes. Do we have the personnel in place to get the job done, or not? And do we need to make changes so as to be able to get the work done?

Mr. **Severens**. Well, from the—I don't know. I could guess a little better from the farmers' standpoint, how many hours that it takes them to deal with the forms—but it's hard for me to know exactly how Farmers Home does that, and I'm sure they must have some sense of how many hours it takes to deal with each case. It's got to be, I don't even know what the range would be, but it's got to be several hours.

Senator **Kerrey**. But there are tremendous physical resources available. After the wonderful payment-in-kind program of 1983, we had to have a disaster program in 1984 for those people who were adversely affected by the decline in revenue as a consequence of the payment-in-kind program. Randy, you probably remember that. And the State government of Nebraska, as in the State of Iowa, took State employees that were doing other things and trained them, as you indicated, Mike, to help people work and process this paper.

Now, in order for somebody to help, you have to be asked to help. And I'm suggesting right now that I think that there's been insufficient evaluation, with all due respect for the dilemma that Bob is in. I think an insufficient amount of evaluation has been done on the question of "do we have the resources to get the job done, and do we need to ask for help?"

Mr. **Baxter**. I'm concerned that the paperwork will not get done because they're not taking time to correct some of these mistakes that we addressed.

Mr. **Thompson**. Senator, I think the major issue is, there's not been a recognition yet in every State of just exactly what the Farmers Home work load will be. And I've worked with a couple of other States just recently, and all of a sudden it's dawning on them that they're facing a much bigger task than originally thought. And some of them don't have any kind of mediation program, and they're going to be expected to call together a group of unsecured creditors to work with the borrower and try to make sense of the DALR$ program. They've never done that role before. They're not going to be able to do that readily, and I think they're starting to get that recognition. But I think you have to have recognition before you can ask, and I think that's sort of what we're looking at now.

Senator **Kerrey**. I think we already can be more precise. Should we consider asking the Secretary of Agriculture to direct the Farmers Home Administration, with all due speed, to begin to consider whether or not they have the resources to get the job done?

Mr. **Thompson**. Yes, sir.

Senator **Kerrey**. Certainly the Secretary of Agriculture ought to have some authority in this matter. I'm getting the impression that everybody is saying, "Well, I don't hold you accountable. I don't hold you accountable." Well, the farmers out there are going to end up suffering the consequences if the program falters.

Woman in Audience. Right.

Senator **Kerrey**. It seems to me, at some point there ought to be somebody in charge of this thing. Someone who can take a look at it and say, "We can't get it done, given the resources that we have right now, given the time that's been put on it." And I really don't think we need to hold some additional hearings on the question of mandatory or voluntary mediation. I think that issue, at this point, is irrelevant, given the urgency that we have right now to act.

Mr. **Thompson**. I think they need some help, and I think it's going to take somebody to talk to them about what kind of help they need.

Mr. **Severens**. Senator Kerrey, I think one of the problems, in addition, you might face and that could frustrate your suggestion there is, I don't sense, over the last few years, any commitment to make these programs work. So that even if, technically and legally, these people can be held accountable, I think the hidden agenda is to help discredit Farmers Home and close down the agency, that there is a goal to shut the agency down. Part of the goal is ending all direct lending, substituting of the guaranteed lending. When that's done, they'll phase that out and the program, the entire agency, will be closed down.

In light of that, a poorly acting agency is exactly what an administration might want, because the goal is discredit Farmers Home and to have it so maligned that everybody will be fed up with it, including the members of the Agriculture Committee, and everybody will just want to wash their hands away with it. So doing a bad job might be part of their strategy. [Applause.]

Senator **Kerrey**. You know, one of the things I try to avoid doing is solving the problem by trying to find somebody I can blame. Though I have taken my fair share of shots at the Farmers Home Administration and the Farm Credit System, taking shots doesn't get the job done. What I'm trying to center on right now is a job that needs to be done.

There's a job out there that has to be done. There are 24,000 applications, and I think there might be probably 35,000 or so by the time the thing's all done; and that's work that needs to be done. I genuinely am saying that here we are on the 13th of February, and there ought to be some way, using some common sense and trying to say what steps need to be taken.

Maybe there's going to have to be an acceleration of training immediately, depending on where the work assignment's going to be made. Maybe an awful lot of the work is going to get assigned to private lenders who have demonstrated the ability to get the job done. We don't need to hold another hearing to reach that conclusion. An acceleration of training has to be done. But first you determine what is needed to get the job done, and then you proceed up accordingly.

It just seems to me that's not being done. I listened to Sox Johnson present his case in Washington, and I don't know the man at all, but I sensed no urgency to act. No urgency to act. The Acting Director of the Farmers Home Administration didn't display the urgency that I hear when I talk to individuals who have received the notice and are trying to figure out how to restructure.

Mr. **Thompson**. I hear that locally, though, in talking to Farmers Home people and in local offices. They sense the urgency, because they're the ones that are going to have to deal with it. So, you know, maybe that's just a matter that it takes time to move up that organization.

Senator **Kerrey**. OK.

Senator **Daschle**. On the same line of what Senator Kerrey said, I'm not a genius in math, but it doesn't take much to figure it out. If you figure 10 hours per case, the 24,000 cases, that's 30,000 8-hour days—30,000 8-hour days, 80 years. What do you think of that? [Laughter.]

Mr. **Haegele**. I don't know that I want to respond to that.

Senator **Daschle**. Have you got 80 years, Bob?

Mr. **Haegele**. I just wanted to comment on Senator Kerrey's. If he would have heard the teleconference that I heard on February 1, you would have heard the urgency of the agency in talking to the State Directors. So, I mean, it is there, and there has been a lot of discussion about it and this type of thing. And if Sox didn't mention that at your meeting, why, that's something else. But we have had a lot of discussions on it. So, I mean, there is a sense of urgency there.

Senator **Kerrey**. I understand why you get defensive because of what I said, but I genuinely am not trying to pin the tail of blame on anybody. I'm simply trying to get the work done and figure out how it can best be done and what I need to do, other than sending letters all around.

Mr. **Haegele**. They are, though, addressing—they have done plenty to address it, but I'm not going to tell you that everything is addressed for all States.

Senator **Kerrey**. Well, that's all I have.

Senator **Harkin**. Anything else? Any other comments from this panel?

Perhaps I will have some other questions I'll submit in writing, John, regarding the inventory land and regarding some of the provisions. I think when the act and some discrepancies I see between that and the agreement between the Farmers Home and the Farm Credit System, but I will submit them in writing.

Mr. **Martin**. If I could, could I put forth one suggestion, Senator, in terms of the availability of $250 million available under the act? If, by chance, it's not all used up by the various Farm Credit districts, I'd suggest that Congress consider holding that over and use that to facilitate the acquisition by farmers and ranchers of property from Farmers Home.

Senator **Harkin**. Good suggestion.

Well, I thank this panel and dismiss you. If you would stay around, there might be some questions that might come up.

And we'll call the second panel. The second panel is William Folkerts, director of the Association of Local Governments, of Watertown, South Dakota; Don Meisner, executive director of the Siouxland Interstate Metropolitan Planning Council of Sioux City; Mary Bro, director of the Western Iowa Development Association, from Avoca, Iowa.

We welcome our second panel. Without objection, your prepared statements will be made a part of the record in their entirety.

We'll do as we did before. If you would just summarize your statements in 5 to 7 minutes, and then we can engage in questions and answers. Again, I thank you for coming here, some of you have come a great distance.

I will start with William Folkerts, director of the Association of Local Governments, Watertown, South Dakota.

STATEMENT OF WILLIAM J. FOLKERTS, DIRECTOR OF THE FIRST DISTRICT ASSOCIATION OF LOCAL GOVERNMENTS AND BOARD MEMBER OF THE NATIONAL ASSOCIATION OF DEVELOPMENT ORGANIZATIONS, WATERTOWN, SD

Mr. **Folkerts**. Thank you, Mr. Chairman, members of the committee. I am Bill Folkerts with the First District Association of Local Governments out of Watertown. We're in a rural area with about 67 small communities ranging in size from a few people to the largest one being Watertown, which is about 16,000 people. But 66 of those are very small communities.

I'm going to summarize my prepared statement, so it will allow us time to get into some discussion. I think that's probably more productive. It gets at the questions that you may have and gives us an opportunity to respond.

I have submitted four specific points that I want to address and let me go over those briefly.

First, the Farmers Home Administration Community Facilities Grant and Loan Program has been very, very important in our area. It has been a source of capital for rural water systems. Fortunately, in our area, a large percentage of the rural residence farms now have quality and quantity of water. However, that doesn't mean that's the end of it. We still need additional funding, loan programs, from Farmers Home to expand those systems, to beef them up, and to provide service to those areas or those individuals who now are finding that, because of the drought, the wells are going bad, the water level is going down, and they need the water. So we need to expand, add on to those existing systems.

They've also been important in terms of fire halls and other community facilities in the small towns.

I have attached to the testimony that you have, a list of the rural programs and what has happened—it's attached on the back of that handout showing what has happened to those programs over the last 8 to 9 years. And under the community facilities, for example, in 1980 there was $240 million in that program. In 1988, it was $95 or $96 million; and in 1989, it's proposed for $50 million. Obviously, I hope that you will reinstate that program at least at its 1984 level, because there is a desperate need for the loans; and I'm talking about loan programs in the rural areas.

Second, in the housing stock, many of the homes in small communities are not energy efficient. Many homes are occupied by a single person; as a result, are large for that single person. But if these larger homes were fixed up properly—and they can be—they certainly would be suitable for the families in the area that are looking for decent housing. The Federal tax law changes and the Farmers Home redtape discourages housing development in small towns. The net effect is that the developers or the builders will build housing in the larger communities. They are going to the communities over 10,000 population.

We heard earlier today an individual advocating that the limit for FmHA program be at under 10,000 population. I agree with that. I think the housing limit should also be set at that figure. That is, Farmers Home Administration rural housing, multifamily, should be in communities of less than 10,000. That would assure that housing units would be built in communities of the 2,000 to 3,000, the De Smets and Clear Lakes that we know, Senator Daschle. Those communities need the housing. In the larger communities, such as Watertown and Brookings, the market can take care of housing needs.

Also, I would ask that, for those smaller projects, that some of the redtape be reduced. I don't think you need to have all of the paperwork you were talking about a pound and a pound and a half! I'm not sure what the size of a rural housing loan package is, but by the time it's done, it looks like a Sears catalogue. It is very thick, and it's very tedious to go through. And it is very difficult for the communities, the small communities, to afford someone to do that work required by FmHA.

B&I loan programs under the Farmers Home has also been important to us. Partnership with the banks have enabled us to add value to rural projects—products and to create jobs. Over the last 8 years, the way to solve the rural development problems has been to tell rural areas that the Federal Government cannot do everything for them; and, then unfortunately, the Federal agencies prepare another booklet or another pamphlet telling us how to do it ourselves. Favorite phrase is "up by our bootstraps."

In my office, I have a large stack of these booklets and pamphlets and so forth which I think are important in and of themselves; but I say it's time that we allocate those resources to the people that are doing the work in the communities, to the locally controlled, multicounty organizations that provide management and planning assistance to Government and to the private sector.

Local elected officials are often working full-time before they serve their Government function. They work 50, 60 hours in their business or wherever, on a farm. Then they serve in their government role. They need a professional staff that knows the Government structure, understands the business needs, and assists in the development and implementation of important projects.

Therefore, I would urge you to fund the section that has been called section 111 of the Rural Development Act. This was a planning phase of that act that was funded several years ago by Congress and was phased out in the early years of the Reagan administration. I think it's important that we have those professional staffs funded at the local levels for a community.

In closing, I want to thank you, Mr. Chairman, for inviting me to be here. I have submitted my prepared testimony to you. At another time, I would happy to discuss other rural development issues. Obviously, because of time, we are limited to only four or five areas. In the meantime, I look forward to working with you as you develop and strengthen programs for rural economic development, and I would be happy to answer any questions that you might have at an appropriate time.

Thank you.

[The prepared statement and attachment of Mr. Folkerts appear at the conclusion of the hearing.]

Senator **Harkin**. Bill, thank you. We will have some questions. I appreciate your testimony.

And now we'll turn to Don Meisner, executive director of the Siouxland Interstate Metropolitan Planning Council.

STATEMENT OF DON MEISNER, EXECUTIVE DIRECTOR, SIOUXLAND INTERSTATE METROPOLITAN PLANNING COUNCIL, SIOUX CITY, IA

Mr. **Meisner**. Thank you, Senator. I'm the one that had to come such a long distance here. Senator Tom, good to see you again.

Senator **Harkin**. Good to see you.

BACKGROUND

Mr. **Meisner**. You've seen my epistles before on the outmigration of the upper north central region; and I won't repeat those, but we have been in this cycle now for 60 years. We've outmigrated our young, and for a number of reasons.

We have not had the investment needed to create the jobs here, and we see this continuing. In addition, we have seen, until recently, a gross decline in the tax bases here, increased Federal mandates and State mandates that cost tremendously, declines in real personal per capita income. Then, at the same time, we've seen a gross retreat by the Federal Government in the partnership that we built during the 1970's. And lastly, we see vast disparities in the Federal program expenditure patterns in this Nation, as well as a huge increase in national debt that robs us of our development capabilities.

NEEDS

We have needs at the local government, and I'll summarize those in four areas:

One, we need to fund leadership development and institutional capacity building if the Midwest is going to prosper.

Two, we need financing for essential public purposes—to finance local-government essential public-purpose infrastructure.

Three, we need to finance business and agricultural development.

Four, we need to finance housing rehabilitation and development.

And we had, in many cases, programs to do exactly that, administered fairly well. But in many cases, the funding is gone; the consistency of program regulation is no longer there; and the flexibility that we had for use is certainly not there.

Now, first, in the leadership area and capacity building, we would need technical assistance, and we need to train ourselves as well as our community leaders so that we can plan for the future.

We see, in this part of the world, several counties working together on a commonwealth approach; and we need to be able to assist that from the Federal Government.

The Farmers Home Administration, as Bill indicated, no longer has a funded technical assistance program; and that is really a shame. We had it. We need to fund it. We need to reincarnate section 111 or a similar type of program and get it back going.

Second, we need to finance essential public improvements. If we have one problem here of local governments, it's the lack of availability of capital at affordable rates for water, sewer, streets, and whatever it is. We simply don't have it. We need to devise a way that we can get capital into these rural areas for development.

The same is true for the business and ag development. We have to have that capital at affordable rates, or we're not going to be able to progress. We need to reduce the time of the applications, as indicated before. We need to allow the capitalization of revolving loan funds administered regionally, and we need to permit, in the Farmers Home B&I [Business and Industry] program, a rehabilitation of mixed use of Main Street, which we currently cannot do. Then we need to provide financing for housing rehabilitation and housing development.

The current programs of Farmers Home Administration and HUD both work very well, and I think they have a dedicated, capable staff in these programs; but we just don't have the amount of funds, either the loan or the grant funds, available.

Now, I think that we need to do several things. I think that we're going to have to institute several of these changes over a phased period, over some years, and my prepared testimony has included some direct recommendations on program by program.

But I think the first phase in this, Senator, should be adequately funding a loan and grant program for these four purposes. And we need, also, improvements in our infrastructure on those types of programs that simply will not cash-flow on a loan basis. Some of them have to have a grant or they simply can't be built; and they are mandated to be built by the same Government. We're in a catch-22 situation.

The second phase, I would think, would be the development of a rural recovery bank. I think you could do this. I think the committee or the Congress could develop a rural recovery bank. And this proposed federally mandated option could, in my opinion, one, establish and capitalize a regionally administered revolving loan fund to provide low cost capital for infrastructure and the other improvements I've mentioned.

Two, it could promote regional investment and regional revolving funds through a process of certificates of participation. I think the advantages of local persons investing in the region are many and obvious; and Bill and I and the rest of us would be glad to work with the committee on expounding any of our suggestions to improvements of the rural programs of the Farmers Home Administration.

Thank you for the opportunity.

[The prepared statement and attachments of Mr. Meisner appear at the conclusion of the hearing.]

Senator HARKIN. Don, thank you very much.

Mary Bro, welcome.

Ms. BRO. Thank you.

Senator HARKIN. You may proceed.

STATEMENT OF MARY BRO, DIRECTOR, WESTERN IOWA DEVELOPMENT ASSOCIATION, AVOCA, IA

Ms. BRO. The Western Iowa Development Association is a multicounty economic development group. We serve Pottawattamie and Shelby Counties, and our mission is primarily to assist small business development, industrial recruitment, and community development. I serve as the executive director for the organization.

Prior to my appointment as the executive director of the Western Iowa Development Association, I was the executive director of the Harrison County Development Corporation. The mission of this single county group was also economic development activities in the county.

It is with these three counties as my background that I'm going to speak today. The needs of the communities in these counties are very similar.

Each county has communities with severe infrastructure problems. Many of them are facing water shortages. During the dry summer this year, the problem became critical to two communities within Shelby County.

Some of these towns are experiencing water treatment problems.

Others need new wastewater treatment facilities. Both of these issues are being pushed by environmental regulations.

The communities struggle to find the financial resources to meet the infrastructure demands. They are doing so when property tax revenues are diminishing.

The Farmers Home Administration community programs are one solution to these problems. It has been and will continue to be used in the three counties. It is a good financial resource.

Unfortunately, the FmHA programs are primarily loans instead of grants. Some of the smaller communities need a grant, because a straight loan is just too difficult repay. Often the application process is long and the problem is urgent. But it is a resource which should be kept in place.

The other area in which our organization is directly involved is business development. Our greatest success over the last 3 years has been in assisting the establishment of new business start-up.

This will be the area that will be the real employment growth for rural communities.

Last year, our organization worked on 54 projects—80 percent of these were small business start-ups. Five new businesses were established, with employment potentials up to 60 people. Each one of these new start-ups, of course, needed financial support from their local financial institution. Obviously they were successful in doing so, but this was not done without the assistance of Federal programs.

These small-town financial institutions are unable to get involved in their communities' new business ventures without some minimizing of the risk. The guarantee programs, such as Farmers Home Administration's B&I loan program, allow these banks to participate and aid the local economy.

Within the Western Iowa Development Association area, there has not been an FmHA B&I loan done in many years. It is not a well-used program in the entire State. I feel that this is due to the program's inability to respond rapidly. The application process takes too long to respond effectively to the client.

I was recently involved in a project in which Farmers Home Administration was asked to provide a guarantee on a building and equipment loan. Following months of application work, the project was still no closer to being funded. The client had a seasonable business, and time was running short. An alternative financing arrangement was established, and the project went forward.

In contrast, another small business start-up, which did not have the complexities of the former, received verification of an SBA guarantee in less than 3 weeks.

But even with the negative experience, the Western Iowa Development Association is supportive of the Farmers Home Administration and wants to see its continued funding.

The structure of the district offices lends itself well to good service to the local communities. It can be a firsthand gauge of the specific needs of that rural area.

We see the level of interest in new business development and the expansion of existing business continuing to grow. A critical look at the real needs of the area served should be done by the Farmers Home Administration. The programs should be marketed more effectively. This could be implemented through the district offices to the local businesses.

The application process should be shortened to be more responsive to the client needs. Finally, as new interest grows, more funds should be allocated to the programs.

If the above-mentioned were done, the Farmers Home Administration programs would be used more frequently in our area.

As one small-town banker said to me, "we need the program. We need the guarantees which allow us to get involved. In order to serve our community and help it grow, we must have the Federal programs available to us which soften the risk."

We support the Farmers Home Administration community and business programs. They have been a good resource for rural development. We wish to see the program continued and expanded.

Thank you.

[The article, "Delmar farmer first in U.S. to buy land in new program," follows:]

DELMAR FARMER FIRST IN U.S. TO BUY LAND IN NEW PROGRAM

(By Dan Looker, Register Agribusiness Writer, February 3, 1989)

At age 24, Guy Ewoldt of Delmar has purchased his first farmland, 160 acres within eyesight of his parents' modest farm. And in doing so, Ewoldt has become the first U.S. farmer to take advantage of a federal program designed to return to family farmers land acquired by the nation's Farm Credit System.

The program, known as the demonstration project, provides up to a 4 percent interest rate subsidy and up to a 95 percent guarantee from Farmers Home Administration for private loans used to buy Farm Credit System land. Ewoldt's purchase was announced Thursday by the Iowa office of FmHA, the Farm Credit Bank of Omaha, the seller of the land, and Maquoketa State Bank, Ewoldt's lender for the land.

Without the program, Ewoldt doesn't know when he would have been able to buy land. He had applied for a Federal land bank loan for the farm shortly after it came on the market last summer, but was turned down.

NET WORTH REQUIREMENT

"They want your net worth to be so high, nobody my age can do that," he said Thursday. The land bank required net worth of two-thirds of the land's $140,000 purchase price. Ewoldt estimated that it would have been at least another six years before he could build up enough net worth to buy land with a conventional loan—"if my net worth keeps building. But land prices keep sneaking up. You never really gain on it."

Ewoldt has been farming for the last five years and was renting 80 acres of cropland. He also farmed his father's 200 acres of cropland in exchange for using his father's farm machinery. And he works part-time as a sheep shearer and raises sheep and hogs on his parents' land. Ewoldt's father, Kenneth, works as a forklift driver at the ALCOA factory in Bettendorf.

Under the demonstration project loan, Ewoldt made a 20 percent downpayment, half the requirement for many conventional loans, and will pay 8 percent interest.

The loan will be closed sometime next week, Ewoldt said.

It will be the first demonstration project loan closed in the United States, said Lee Johnson of the Iowa office of FmHA. Demonstration project loans are available only in Farm Credit System districts that have received federally backed financial assistance authorized by the Agricultural Credit Act of 1987. The Omaha FCS district, which includes Iowa, Nebraska, South Dakota and Wyoming, has received $110 million in financial aid.

News of the first demonstration project loan was welcomed by David Ostendorf of Prairiefire, a Des Moines farm advocacy group that met with FmHA and Farm Credit System officials several times in 1988 to urge speedy use of the project.

"We hope this is the first of many," Ostendorf said. Without the program, land sold by the Farm Credit System might not fall into the hands of modest-sized family-operated farms, he said. If the program isn't used quickly, "we're going to see very concentrated control of land that this nation has never seen before," Ostendorf said.

John Martin, senior vice president of Farm Credit Services of Omaha, said that the Omaha Farm Credit Bank had about 35,000 acres of Iowa farmland for sale at the end of November 1988, and that slightly more was available at the end of the bank's fiscal year on Dec. 31. He said he couldn't disclose the exact acreage until the bank releases highlights of its annual report later this month.

Senator HARKIN. Mary, thank you very much for your testimony. Just taking off of where you left off, to get some idea of what's been happening in our rural areas, when you look at—now, I'm reading from your attachment—Bill Folkerts' attachment here. In 1980, B&I grants—there were $10 million. B&I loans, $1.73 billion in B&I loans in 1980. Last year it was $95 million. Went from $1 billion to $95 million B&I dollars.

Mr. FOLKERTS. Right.

Senator **Harkin**. And, of course, the grants went out in 1981 down to zero ever since.

Mr. **Folkerts**. Right.

Senator **Harkin**. Community facility loans, $240 million in 1980, down to $95 million last year. Water and waste disposal, $700 million in 1980, down to $330 million, cut in half. Water and waste disposal grants from $290 million in 1980, to $109 million last year.

Mr. **Meisner**. Mandates haven't changed.

Senator **Harkin**. The mandates haven't changed.

Mr. **Folkerts**. In fact, Senator, that's one of the things that's interesting. EPA, on the other hand—the other branch of our government—is imposing more stringent requirements every year on those very communities for water standards and for wastewater treatment standards. And where are they going for funding? Because EPA is phasing out of the grant program. As of this year, there will no longer be a grant program.

Mr. **Meisner**. And the next one is solid waste and hazardous waste.

Senator **Harkin**. Sure.

Mr. **Meisner**. Asbestos.

Senator **Harkin**. Asbestos in schools. I was just telling Senator Daschle I had a hearing yesterday in Fairfield, Iowa, southeast Iowa. Actually, it really wasn't a formal hearing. I had received some cards and letters in that area from people having water problems, so I called a meeting down there; and about 200, 250 people showed up.

Incredible stories about what's happening. I mean, not only the quality of the water. I mean, they're out of water. A farmer selling off 200 head of hogs because he was trucking in water. He finally figured out that that's not a very smart way to lose money. He was trucking in his water and had to sell off his hogs. Another person sold off his cows. A farmer dug the well 12 years ago, and the quantity has gone down so much that the concentration of sulfur and iron in the water was so much they can't drink it anymore.

Elderly people, living by themselves, having to get neighbors to go to another town to get gallon jugs full of water, to bring them back just so they have water to drink. And yet, nearby, we have rural water systems that we could hook up, treatment facilities that could operate to treat the water. But no money. We'll put the money out there for them, to hook up and to get those rural water extensions out there. I'm sure that's the same case in South Dakota, Nebraska, most of the other areas in the Midwest where we've been suffering from this drought and dry weather.

It's not just last year. I keep asking the question, was the drought just last year? And they say no, it's been coming for some time. Water level has been going down over the last several years.

Senator **Daschle**. And the problem we have is that you plan a rural water system with a certain number of people utilizing that system. If you don't have rural development, those people aren't going to be there in 10 years. So what you have is a rural water system that nobody can use because they aren't there any longer. Building a rural water system may attract people, but it's sort of a chicken-and-egg thing. I think having that rural development gives

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Senator DASCHLE. And the problem we have is that you plan a rural water system with a certain number of people utilizing that system. If you don't have rural development, those people aren't going to be there in 10 years. So what you have is a rural water system that nobody can use because they aren't there any longer. Building a rural water system may attract people, but it's sort of a chicken-and-egg thing. I think having that rural development gives would also advocate the shift of the B&I, the Business and Industrial loan program or a revolving-loan-type program to the multicounty level. There's good evidence that it works very effectively. And I'll leave this with your staff, Senator. This is the Mount Auburn study of revolving loan funds across the Nation and gives some very good information about the successes and some of the problems with them, but also points out how those programs operate now and can operate more effectively. They're already in existence. In a lot of cases, they were just talking about recapitalizing.

I think the answer to your question is, if I had my druthers, it's fund the existing programs and put the administration of those programs at a level that is responsive to the needs of the local communities.

Mr. MEISNER. I agree. I think one of the things that happened is, under the current system, most of the grant programs are a competitive grant, and that's a very costly process. We should figure out what we need to have done and then contract with those regional groups to do it; and we can save a lot of money and we can save a lot of time and we can save a lot of staff reviewing—or that do not have to write the regulations and review the grant—competitive grant applications.

I think critical is that a program like that little program of section 111, that Farmers Home no longer has the capacity of building our technical assistance program of any kind for local governments through regional groups, as HUD program also was ended. The EDA is the only one that remains, and that's been a target for 8 years.

Senator HARKIN. Mary.

Ms. BRO. I would like to see more money allocated to the existing programs. I've only been in the business 3 years, and as I became involved with it, some of my mentors would say, "Well, just forget about EDA or forget about this, when there isn't any funds there." How wonderful it would be to have those programs available to us. But we try to find resources locally or do something innovative to meet those needs that aren't being filled by these Federal programs right now.

Senator HARKIN. You were mentioning about the chicken and the egg. We have a small community in southern Iowa that has an egg plant there.

How many employees?

Ms. HUNTOON. 200.

Senator HARKIN. About 200 people they employ. And, of course, it takes a lot of water for an egg plant, and now they can't get the water. They're trucking the water in. And again, they are trying to get a rural water system line over to it, and if they can't get water fairly soon, they're going to move. And then that begins the downward spiral.

Now, 200 jobs in that community is one big whack of that community. How big is that? Be, what, maybe 5000? Four or five thousand? Four thousand people, maybe. Take a couple hundred jobs out, and that's tough. That begins the whole downward spiral of everything else. So in that case, I know which has to come first.

Mr. FOLKERTS. One other comment, maybe, on the brighter side. I sense that particularly people in South Dakota are starting to feel a little bit better that we really can do something for ourselves. We can do it. We're feeling a little better. Now, I say "a little." We have a little more hope than we had before; and I think, as a result, we need to act now, or we're going to dash that hope again and then we're going to be in that downward spiral that you're talking about.

There has been an awareness lifted and I don't know why. I won't place the credit anyplace. But people are willing to really work hard to try to make life a little better in their community, and they need a little help from the Federal side in those efforts. People are really willing to work very, very hard right now. And let's help them a little bit.

Senator **HARKIN**. Let me read for you. President Bush's budget recommendations included the following statement. I read one earlier. You heard me read the first one a while ago. Here's the second one.

"For rural development, community facility guarantees will assist more creditworthy municipalities than direct loans have, leaving less creditworthy borrowers to turn to State government for alternative financing sources."

My questions are, what are the State government or alternative financing sources they might be referring to? Do you have any idea? Do they exist, and are they adequate to take the place of direct Farmers Home loans? In other words, they're increasing the guarantee, cutting out the direct loans.

Mr. **MEISNER**. Well, they increase on a guaranteed loan program, that can work very well. The problem is, from my viewpoint at least, some of these enterprise projects, like a new sewer system or a water system in a community, will not work with a loan at conventional rates. It just won't work. It won't cash-flow. In some of these systems that have to be put in for health reasons or because of federally mandated or State mandates, there has to be a grant and/or low-interest loan from the financial analysis, very often.

Senator **HARKIN**. It seems to me that what they're doing is, they're just increasing the guarantees; and then again, that's market rate loans. You cut down the direct loans. I'm just saying who's going to fill up the gap? If a community can't qualify, can't pay that direct interest rate, are there State programs? They said State government or alternative financing sources. Are there such things that you know of either in Iowa or in South Dakota?

Mr. **MEISNER**. Or Nebraska. They're not adequate. There are not adequate programs to finance needs, not by any stretch of the imagination. And the amounts of alternative sources are few and far between, depending on the State in the Nation that you may be in.

Mr. **FOLKERTS**. In South Dakota, we do not have alternative sources. They just aren't there. I'm not sure what they're driving at. I can give you some examples that the community that's putting in a fire hall, whether it's at Kadoka, South Dakota, or whether it's a Lake Norden, South Dakota, usually that fire hall is in a $30,000 to $40,000 range. In a community of 200 to 300 people, they don't have that money sitting in a sock, and they can't get it from a lending institution. They have really no alternative, other than the Farmers Home Administration.

If there is an alternative, I'd like to know about it, because we've got a bunch of communities that would like to be doing something with fire halls. We've got quite a number of them that would like to build a new fire hall, and there just aren't any sources around. Farmers Home is the only one that I know of. Community development block grant is another one, under HUD; but that one is very difficult to obtain funding.

Because of the limited resources, our State—and I think rightfully so—has made the decision that CDBG funds should go to the water projects first. After all, if people do not have water, it's a pretty severe situation. I think that's more important than the fire hall. I happen to agree with that idea. So with a few other things they have to fund, there's very limited resources available for fire halls.

Senator HARKIN. One last thing that I have. Mary, you've been involved in a lot of economic development programs. You talked about new businesses starting up in that area. You talked about the number you've worked on and the number started.

Tell me a little bit about the infrastructure. What's it like to be a small business? If they're trying to start up, what, aside from capital, are there other things that they need? Infrastructure help, water, electricity, transportation? Are there other things? What are the various things that go into some of these decisions whether or not small businesses start up in these communities?

Ms. BRO. Well, it depends upon the size of the community, too, whether or not the degree of problem really exists. A lot of times you go out and counsel a small town about wanting me to bring them an industry, go out and get them an industry to come to our town. But what they really need is to beef up their sewer system or their water system. Before that infrastructure is in place, we can't be bringing anything to them. It will tax what they've already got and the residents that are there.

So it is a difficult situation in trying to make sure that these communities have the basics in place before we can bring any new employment opportunities to them, therefore increasing their residents.

Senator HARKIN. Do you know of any examples of businesses that could have come into a community had they had adequate water or sewage? Has that happened out in your area at all?

Ms. BRO. We have taken our product, which may be an industrial site, within an area that does not have water or sewer and targeted our marketing toward those businesses that would not need the extensive water and sewer. But it certainly limits the possibility for me as a marketing person.

Senator HARKIN. I see.

Mr. FOLKERTS. I think also industry or business makes that decision too. If they look at a community and find that the community may not be able to take care of their wastewater treatment, according to standards, they're going to check that community off and go to the next one.

Ms. BRO. It is a process of elimination most of the time, when it comes to a direction of outside industries and existing industries expanding.

Senator **Harkin**. Senator Daschle really hit the nail on the head. Are we going to have a new bill, a new thing, or are we just going to try to get money over into the existing programs we have?

1980, the 1980 Rural Development Act, both Tom and I worked on this act when we were in the House, mandated that USDA take the lead role in rural development. Has that occurred? USDA is supposed to be the lead agency in rural development. From what I see from the budget figures there is not much happening.

Mr. **Meisner**. No. Actually, the Department of Housing and Urban Development puts more money into rural development than the Department of Agriculture, from a community standpoint, by far, through the one program, the Community Development Block Grant Program.

Senator **Harkin**. Interesting.

Senator **Daschle**. I would just note for the record that in the Department of Agriculture, out of the 10 programs that exist, 5 of them are zeroed out this year, completely zeroed out. And then in every other case, the funds have been cut back dramatically. The B&I program was $1 billion, as you said earlier. Down to $95 million in 1989. And then if you look at the——

Senator **Harkin**. The EDA?

Senator **Daschle**. The EDA is zeroed out all the way through. It looks like about 12 programs are completely zeroed out. There's nothing kinder and gentler about that.

Mr. **Meisner**. The EDA programs were zeroed out each of the last 8 years.

Senator **Daschle**. Yet, Congress has reinstated the funding each year.

Mr. **Folkerts**. That's right.

Senator **Daschle**. We've been through those battles. And once again, we have the same situation. I was hoping, under the new administration, that we would come to our senses with regard to the importance of the program, but it seems to be the same again. We will have to reinstate the Department of Agriculture programs. Those zeros probably won't stay, but it will be Congress that will reinstate it.

Well, I don't have any further questions. You've been an extremely helpful panel. I am speaking, I'm sure, for everybody. I really appreciate it. Thank you.

Senator **Harkin**. I certainly know of your fine work and Mary's work down in that area. It's been great.

Ms. **Bro**. Thank you.

Senator **Harkin**. Congratulations. Thank you very much.

Mr. **Folkerts**. Thank you.

Senator **Daschle**. Tom, I have to get up to Sioux Falls, and I really apologize for having to leave early.

Senator **Harkin**. Takes a long time to get to Sioux Falls.

Senator **Daschle**. That's right.

Senator **Harkin**. Hardly even there. I'm just kidding. Thanks for coming. I really appreciate it.

Senator **Harkin**. Thanks, Tom.

I'm just going to call, now, as I said I would and let's take a little bit of time for the audience. Anyone in the audience want to make some comments? I'd invite you to come up and take a microphone here. And again, give me your name and where you're from. I'd just invite anybody from the audience who wants to come up and say something. Come right ahead and you better form a line, though.

Just sit down there.

Mr. ZAJAC. I've never sat this close to a Senator before.

Senator HARKIN. Well, you better hope it doesn't rub off. Here, sit over here. You just stand back there. Now, I can't take a great deal of time, but I do want to hear from members of the audience. If there are more, why don't you just sit up here in the front row, and I'll get to you.

You're closest. You go first. Give me your name and where you're from.

OPEN MICROPHONE TESTIMONY

STATEMENT OF RAY ZAJAC, FARMER, LIDGERWOOD, ND

Mr. ZAJAC. OK. My name is Ray Zajac, Z-a-j-a-c. I'm from Lidgerwood, North Dakota; and my main concern is a problem I have with the 1970 Farm Credit Act and the restructuring with the Farm Credit Services Federal land bank particularly.

There are a number of individual problems all the way from age discrimination to misrepresentation and some offices trying to make examples out of people—out of farmers exercising their legal rights or their borrower rights.

But the four main problems I see in our area, the Seventh District and North Dakota and northern Minnesota. The first problem is the lack of cooperation and willingness to help the delinquent borrowers through this financial time, especially by the Federal land bank. The Federal land bank, at least in the Fargo district, when I got my 45-day notice, we had no idea as to what kind of plan they were going to accept. We were on our own putting our plan in. Once we put our plan in, it was turned down, so we asked for an appeal; and I went to my appeal hearing which was 7 to 10 days later. The next day after my appeal hearing, I received my notice in the mail that I was turned down again. I think they need some type of directive to let the farmers know, when they're filling out this 45-day notice, what is expected of them.

Senator HARKIN. Did you get yours in on time?

Mr. ZAJAC. Yes. I'm with the Federal land bank, not FmHA.

Senator HARKIN. Oh, Federal land bank.

Mr. ZAJAC. Yes. I made sure of that.

Senator HARKIN. OK.

Mr. ZAJAC. OK.

Senator HARKIN. So what you're saying is, you're backing up what some of the other people said: a lot of confusion out there?

Mr. ZAJAC. Yes.

Senator HARKIN. You're not getting the right directions, and you're not getting any assistance in terms of filling out the forms?

Mr. ZAJAC. From the Federal land bank, yes.

Senator HARKIN. From the Federal land bank.

Mr. ZAJAC. Yes. When we put——

Senator HARKIN. Now, had you applied under the demonstration project? Is that what your situation is?

Mr. ZAJAC. No. My situation, as it stands now, is, I sued the Federal land bank in Federal court, and I'm in the Eighth Circuit Court of Appeals now. They stopped my sheriff's sale, and they're deciding if I got a right to sue the Federal land bank or not and if I get a right to have my land reappraised.

Senator HARKIN. I'm going to have to move along. Now, I'm going to have to kind of limit time. You understand a lot of people want to say things.

Mr. ZAJAC. Right.

Senator HARKIN. You sit right there. Give us your name.

STATEMENT OF ARLIE SHOLES, NORTHEAST COMMUNITY COLLEGE, NORFOLK, NE

Mr. SHOLES. My name is Arlie Sholes. First name, A-r-l-i-e, second S-h-o-l-e-s. I am from Norfolk, Nebraska. I was hoping Senator Kerrey could stay longer.

Senator HARKIN. He had to go someplace way out in western Nebraska.

Mr. SHOLES. But at any rate, my position is that for 3 years now I've been doing farm financial analysis for Northeast Community College, traveling all over northeast Nebraska; and lately we've been real closely involved with the FmHA workouts. And I should say that I'm not here on behalf of the community college or anything like that. It's on my own initiative that I'm here, and the things I say are mostly in the defense of or in behalf of the farmers that I've been working with in trying to do these workouts; and we've had some problems with it, and I think there are some things that need to be pointed out.

Senator HARKIN. What are they?

Mr. SHOLES. OK. No. 1, I think you ought to appreciate the mindset that is out there. And these are reports, research reports, from the NCEP. And just reading a couple sentences from one here, for the sake of time——

Senator HARKIN. What is the NCEP?

Mr. SHOLES. National Commission for Employment Policy, 1522 K Street Northwest, Suite 300, Washington, D.C. 20005.

And these are reports that, after figures are gathered from the farm crisis, et cetera, they have this one here that was done by a fellow, Allan Olmstead (phonetic), January 1988, and they give their recommendations, recommendations like this.

First, the farm financial crisis is receding in 1977, 1987–1988. There appears to be no need for additional crisis farmer assistance program beyond the programs already established. Second, a flexible farmer assistance program could be developed to handle a future farm financial crisis. And third, farmer adjustment programs should be an integral part of future Federal farm program changes which displace farmers.

I only say that from the point of view that it's pretty well acknowledged that a lot of the farmer displacement is coming from farm programs, et cetera.

Now, this is a piece from the "New Horizons for Nebraska Issue Briefs, Legislative Research Division"; and in terms of farm finances, they're looking at ways to help stem brain drain, et cetera.

And a statement from there gives you an idea of what rural people might be thinking in termination of, quote, unquote, "What's happening to me?"

Additional need for taxes everywhere. We'll use that as a basic underlying assumption. Some also cite the level of income taxation as an important factor to stem the brain drain. And recent changes in the State income tax have reduced the relative burden placed on higher incomes.

That tells us that, in spite of farm financial crisis, we're trying to keep smarter people in our State; and it basically says that we'll reduce the tax on higher-income people and work on lower-income people in order to have more tax money. That, I think, gives us an idea of the mindset of what's going on in the rural communities.

In terms of the particular FmHA thing as I was sitting in the audience looking here, I noticed that, generally, lending has a different attitude than borrowing, particularly in the rural sector. Lenders mostly think things are working all right. Borrowers, it's not working so good. There seems to be a top-dollar approach, and this is very evident in the FmHA workout process they have. The thing comes down and says, "This is what's going to happen. This is the way it's going to work." And we're having very little leeway in between there.

The FmHA guidelines that are sent out in that pound and a half of paper, bottom line says every effort is to keep the farmer in business. That's a little bit doubtful. The DALR$ program uses priorities. We will start with this plan, go through it, go through it, and anywhere in that program that it can show a positive cash-flow, it stops, and this is what you're offered.

We have one basic complication there. No. 1, it stops when it can show a positive cash-flow, if that is $1 or $30, whatever it is. And a fundamental fact is, from doing farm financial analysis for 3 years, if you're going to operate a cash-flow at 100 percent on a farm, it just flat isn't going to work.

And a real close example of that is that I had a fellow out there that we went through the usual complications. We filled out paperwork three and four times. We finally sent it in. FmHA used their figures, and this guy says, "I lost three letters while I was trying to fill out this paperwork." Essentially, if you're operating his cash-flow at 100 percent, losing three letters destroyed his cash-flow for now, and that was because of FmHA paperwork. For nothing else.

Senator HARKIN. All right. I'm going to have to ask you to summarize, because I have to give everybody a fair shot.

Mr. SHOLES. OK. I think I'll just make one other point, then, and quit. This is a very capricious system being used in the FmHA workouts, not only varying between States or counties. I know County Supervisors, for one, have used dollar values for corn anywhere from $1.40 to $2.80, neither figure within the guidelines, and farmers are really having to struggle to get the right figure used.

A summary might be this. Four years ago, when we started the farm financial crisis—farm crisis thing, we had an attorney doing a presentation for us, and he was telling us what FmHA was going to expect. He got frustrated in his presentation. He held his book up like this, and he says, "The basic problem is this." He says, "You show me anyone, anywhere in the FmHA organization, who makes a decision." And the other part of that is, if no one is making a decision, no one is accountable, either.

Senator HARKIN. That's true.

STATEMENT OF MARIE WHITING, MIDDLE AMERICA NETWORK, SIOUX CITY, IA

Ms. WHITING. Marie Whiteing of Middle America Network, here out of northwest Iowa. We work with Skip at SIMPCO doing rural development. I would concur with much of what the preceding speaker said, but I do want to speak in terms of rural development.

Both of you talked about reinstating dollars to USDA for rural development, and I think that's admirable. My concern is where those dollars are targeted and how they are distributed.

I have a story about low-input sustainable agriculture, the LISA program, and I'm very upset about the fact that I tried very hard last year to make application for two people. One was a $7,000 grant, the other a $5,000 grant. Wasn't big. Some people have some good ideas in sustainable agriculture up here in northwest Iowa, only to find out, after I called eight times to Iowa State University, that the awards had already been—I saw the fellow at the World Food Conference, and he said, "I'm sorry, Marie. The awards have already been made for this year."

Graciously he sent me the catalog of the awards that were made; and from my perspective, it looks to me like most of those low-input sustainable agriculture dollars are going to State universities. I don't see those little private projects out there that I think could have some real meaning in terms of enabling small communities to diversify. I just don't see them in that program.

So my concern is, it's great to want to reinstate those dollars, but if you reinstate those dollars and they go to perpetuate bureaucracies and they don't go to deal with rural development at the rural level, at the local level, the same problem exists.

Senator HARKIN. Very good. Thanks, Marie.

STATEMENT OF GEORGE PICK, FARMER, HARTINGTON, NE

Mr. PICK. George Pick, P-i-c-k, Hartington, Nebraska. I'm an owner and operator of a family farm, 480 acres. Senator Harkin, I'd like to thank you for bringing this hearing here to Sioux City, and I hope we continue to have some hearings up here in the Midwest. And I'd also like to also thank the people here at Sioux City for hosting it.

The thing I'd like to address, Senator Harkin, is the Uniform Commercial Code. Many borrowers have signed agreements with lenders, not knowing or realizing that a mortgage on the crop or growing crops is good for 5 years. After signing such financial statements, we have found, to our dismay, the lenders then refuse to give us operating funds for fuel, fertilizer, seed, and such items which are necessary in carrying on the farming operation.

If you are a reliable person and have paid your bills in the past, your co-op and supplier may furnish you the necessary items to put your crop in as well as harvest it. The supplier then finds himself in trouble to collect. The bank that has filed a financial statement furnishes no funds for the crop, input or harvesting. It wants its name on the check from the crops. Keep in mind, the bank also has a mortgage on machinery, equipment, and livestock.

It would seem only fair and reasonable that the Uniform Commercial Code be limited to 1 year of any crop. The present situation has hampered both the sale and rental of land. Who wants to get involved when a crop is mortgaged 5 years in advance?

The present is a hardship in several other ways. A farmer who came to the back when he sealed his corn gave the bank the money, then PIK enrolls it back and turns it to grain and resells it. The bank doesn't take the money once, but takes it twice for the same crop.

The present situation has led more farmers and small businesses into bankruptcy. With more emphasis on guaranteed loans from FmHA and banks, most of which are for 7 years and 90 percent guaranteed, as required by the Uniform Commercial Code, this serious injustice must be corrected. A solution would be, if the lender had their name on the check for that year crop, they should be released immediately and a severe penalty paid to the borrower if not released in 10 days.

I have known cases where a borrower changed banks, paid off his former bank in full, yet the former bank did not release, and he was forced to go to his former banker to have his check signed, even though he owed them no money. We should come to realize many elevators, markets, and farmers are mighty unhappy with the present situation. If America is truly the land of the free, it's time to restore the basic rights of justice and dignity to the common people.

Senator **Harkin**. Thank you.

[Applause.]

Mr. **Zajac**. Can I comment in that? In North Dakota, our State legislature passed a law limiting UCC's on crop mortgages to 1 year.

Mr. **Pick**. Its got to be that way.

Mr. **Zajac**. And maybe Nebraska could do the same thing.

Senator **Harkin**. I'll look at that. I didn't know that.

Mr. **Pick**. Senator, I'd like to comment on one other thing or two here that you put your finger on.

You know, we've heard the optimism here, but a lot of the things—they tell us things are on recovery. But we haven't realized, in the 1986 tax changes, they took out investment credit, capital gains, and income averaging. Now, when a farmer thinks he's going to get out of debt, wait until he files his income tax. He's going to get burned again.

The other thing, with interest rates going up and program payments down. Another thing: The irrigator got nothing out of the drought disaster deal; and I know, myself, I paid triple of what my costs were for the prior year. I actually bought my ground. And I thank you for the opportunity.

Senator **Harkin**. Appreciate it. Thank you.

STATEMENT OF JOHN LONG, HOG PRODUCER, LAUREL, NE

Mr. **Long**. My name is John Long. I'm a hog producer from Laurel, Nebraska.

Senator Harkin, as I see this problem, it's the same problem that we hog producers go through about every fourth year. We simply have too much credit supply for all institutional sources to make a profit on this. The only logical solution that I see is that some of the sources are going to have to get out of the business.

With that, I think, it's logical, to me that we take the publicly financed sources out of the market. Now, that doesn't mean it's problem-free. But, you know, I listened to all the testimony this afternoon. With all the problems we have, you know, the system—particularly, the FmHA system is a failure. You know, they have a problem. They can't fill out the papers. We get a pound and a half of papers. They talk about the administration taking advantage of them. To me, if the management is so incompetent that it can't handle the agency, that's not all the administration's problem.

I think, with the advent of the Farmer Mac, that we have some real opportunities to replace the Federal land bank and the PCA also, even though I don't think their problems are costing us, as taxpayers, the same amount as the FmHA had. But I listened to all this. And we do not need these grants, because we can't afford them.

As a hog producer, there's a number of things I'd like to do. There's technology I simply can't afford. And part of the problem we have with this—it all boils down to profit, because none of these entitlements can take place if somebody doesn't produce a profit someplace. The danger I see in expanding the programs and expanding the publicly financed—financing of any industry is that we will just turn it into a public utility.

I read the article in the Omaha paper on the first loan under the new program with FmHA. In my analysis of this loan, the young man received $140,000 loan from FmHA, and it was five points under the current market. Four points of those were being subsidized by FmHA, which is all of us in this room. So it was four points, or $5,600 a year, on that one-quarter of land, was subsidized by the public. The Maquoketa State Bank was subsidizing the same loan at the rate of $1,400 per year. So that's $7,000 for one-quarter. I'm guessing it may take four quarters of ground to be a viable operation. If that's the case, we have a $28,000-a-year subsidy just for the land for one operation.

Senator HARKIN. Now, what's your point on that?

Mr. LONG. My point on that is, if we continue to subsidize this, that $28,000 has to come from profit from somebody's operation.

Senator HARKIN. Well, now, let's back up a second, though. I know about this. I have the article right here, and I have all the information. The point is that under the demonstration project, if this young man bought that land, it had to be the best offer. You understand? It had to be the best offer for the land for the Farm Credit System. What I'm saying is, yes, it was subsidized by four points by the Government; yes, that helped him out—helped him out in buying it.

But if the Farm Credit Services were to turn around and just sell that parcel of land off, they aren't going to get that much money for it. That's the best offer they got on that land. So why not sell it to a young person that's going to live there, going to farm it, going to contribute to his community, rather than bundling it up in great big sections and selling it off to some big investor that lives someplace else, you see?

[Applause.]

Yeah, a little bit of a subsidy, but just think what it's going to do for the feed, seed, fertilizer, the businesses in that community. And, again, we've already lost the money. The money's been lost. All we're trying to do is figure out the best way of getting that land back in the hands of farmers. And quite frankly, that's a very small—not even a price to pay. That's a good investment. That's an investment that will pay that community back.

Mr. **Long**. Do you know what the next best offer was?

Senator **Harkin**. I don't know. I just know it was the best offer.

Mr. **Long**. I mean, I guess my point is, without the subsidy, what is the offer? I mean, we have a real problem, you know, when we're speaking about this. Speaking about playing on a level playing field with the EEC, now, the way I look at this, somebody that is creditworthy—because in that article, you know, it showed that he couldn't get the loan. Somebody that was creditworthy that was going to pay $130,000 instead of $140,000 doesn't have the same opportunity. Is that what I'm reading what you're saying?

Senator **Harkin**. Well, for that parcel of land, no. Now, see, again, what the Farm Credit System and a lot of people were arguing, Frank Naylor and others were arguing, is they had to take all this land and bundle it up in great big huge bundles and sell it to an investor someplace.

Mr. **Zajac**. That's a bunch of bullshit.

Senator **Harkin**. We said we didn't want to do that.

Mr. **Zajac**. If they would use this Farm Credit Act to sell it to the farmer that owned that land for what they sell it to the big investors for, the farmer, could afford to buy the land back himself——

Senator **Harkin**. That's right.

Mr. **Zajac**. And I have proof right here.

Senator **Harkin**. And that's what we're doing with this.

Mr. **Zajac**. They want cash from the farmer, but they'll sell it to some outside investor for less money and contract for deed with a low interest rate. Why don't they give that same deal to the farmer that had the land?

Senator **Harkin**. That's what this demonstration project is for. The land bank required a net worth of two-thirds of the land's $140,000 purchase price. Guy Ewoldt didn't have it. He'd been farming, was renting 80 acres of land. He also farmed his father's 200 acres, worked part-time as a sheep shearer, raises sheep and hogs on his parents' land. Under the demonstration project, he made a 20 percent downpayment of the $140,000 and will pay 8 percent interest. He has to pay 8 percent interest.

And quite frankly, I'm saying that I think we all have a good deal. I think the Government got a good deal. He got a good deal. The community got a good deal. And that's the way it's supposed to work. I'm just taking issue with you on that.

Mr. **Long**. OK. Well, I mean, I'm reading the article right out of the Omaha World paper, and I see that here. In here, it states the rate will be 6.95 percent.

Senator HARKIN. Well, and the Des Moines paper says 8 percent, so there you go.

Mr. LONG. Well——

Senator HARKIN. I don't know. 6.98 percent. But anyway, your point was to let the market handle it and forget about any subsidies in there?

Mr. LONG. Yes.

Senator HARKIN. Appreciate that.

Mr. LONG. Thank you.

[The prepared statement and attachments of Mr. Long appear at the conclusion of the hearing.]

Senator HARKIN. Thank you. Yes.

STATEMENT OF RON FRAUENSHUH, JR., ATTORNEY, ORTONVILLE, MN

Mr. FRAUENSHUH. My name is Ron Frauenshuh. It is spelled F-r-a-u-e-n-s-h-u-h, and that's Junior. I'm from Ortonville, Minnesota, right on the South Dakota border. I'm an attorney-at-law. I don't know if you call it specializing, because we don't have specialization in the State of Minnesota, but we have a needed law practice that does extensive work for farmers and with the Farm Credit System. I understand that you're under time pressure, so I'll try to be as quick as I can. Lawyers sometimes get too long, so I'll try to be quicker as a lawyer.

Senator HARKIN. My watch is running.

Mr. FRAUENSHUH. The first thing that I would like to say is that in working with farmers, the biggest problem that we still have is the issue of the private cause of action. And with the *Leckband* case and the *Harper* case decided at the Eighth Circuit Court of Appeals, we're still not sure where they're going to fall. But I guess the one thing I would encourage you to do is go back and specifically say in the language that there is a private cause of action allowing farmers to sue the Farm Credit System for violations of the 1985 farm bill and the 1987 Agricultural Credit Act.

We still do have a lot of problems, especially in the State of Minnesota, with the judges complying with what I believe is the intent of the Congress, and we need to work with that; and I would hope that you would allow and encourage the private cause of action language, using that very specific language, in any new acts or amendments to any the current acts.

The second thing is that even today, I have a letter, dated February 9, 1989—just a little bit of background on the case: A farmer affected by the drought in Minnesota was current with his payments until December 1, 1988. He went into default. He had been with the Farm Credit System for approximately 10 years, and he wrote to them, saying that he was unable to make his payments because of the drought and that he had heard that, under the Drought Assistance Act of 1988, there should be forbearance.

This was the response from the Federal land bank association, W. Blaine Kurth from Madison. He said, "There is no specific requirement under the Drought Assistance Act that Farm Credit Services exercise any special forbearance in the collection of principal and interest on loans outstanding to farmers hurt by the drought. The 45-day package which you received outlines your rights under the Farm Credit Act. If you have any further questions, please feel free to contact me."

We see these types of letters in my office very frequently. They don't really pay any attention to what the Agricultural Credit Act of 1988 really says out in the field. Then when we get to Mr. Naylor or Mr. Duncan with the Farm Credit Administration, but out in the field they are not practicing, I think, the intent of the Congress—of the legislation.

And the last thing I want to say is, I've had two cases in which there's been fraud, one where a blank mortgage was signed, and we're able to prove the elements of the fraud. Those loan officers that added the 160 acres in that case are now supervisors and were promoted within the ranks. In another case that I'm working with, a forged signature appeared on a financial statement. And we contacted the FBI, and they had the FBI work and try to do something about the criminal sanctions that these people are involved with; and the FBI basically told us, "If it doesn't involve sex or drugs, we're not interested."

We need some enforcement mechanisms, and our courts aren't enforcing them, and I have one suggestion. If you allow the American Travelers Association and other plaintiffs' organizations to sue the Farm Credit System for punitive damages for fraud and misrepresentation, it will resolve the problem. [Applause.]

Senator HARKIN. Thank you.

STATEMENT OF LEOURIETA B. GLASS, VALLEY, NE

Ms. GLASS. My name is Leourieta B. Glass. I'll spell my first name. It's spelled L-e-o-u-r-i-e-t-a. I'm from Valley, Nebraska. I'm originally from Iowa. My problem is a little bit different, but it goes along with the fraud business.

In 1981, a man came to my husband, and he asked to go ahead—and he had a farm at Fort Dodge, Iowa, and another farm at Melrose, New Mexico, that he was on the verge of losing. And he asked my husband to put up money, and my husband referred him to Omaha National Bank. They went ahead, and Marv Rowan of the bank was supposed to check out all the particulars on this farm in New Mexico. It was a offer to buy that was no good. The bank went ahead, and they were supposed to check it out, and they never did it. But they said it was OK, because of my husband's financial statement, to go ahead and put up the money.

I brought a whole packet of probably 50 to 75 pages of documentation that can back up everything I have said.

The farm at one time—part of it had been sold off to the Melrose bombing range expansion, and Travelers Insurance Company had already foreclosed on two previous owners on that farm; and they had a straw man in there by the name of Edgar Powell or his corporation, Cantara Land Company. They went ahead, and they put three $800,000 mortgages on that farm. One, I cannot prove where in the heck they went ahead and ever paid it back off from Edgar Powell. It was on the abstract from that.

So shortly after my husband gets involved in that, the second mortgage that this Edgar Powell had had, he had give full assignment to a Winter Garden Credit Production Association. They flew 700 miles, to Cotulla, Texas, and did this piece of paperwork. Shortly after that, Dan Bailey, who was an officer of the bank, asked my husband to help out Senator John DeCamp and Schmit; and Senator DeCamp at that time was in charge of the banking legislation, and his purpose was to go ahead and see if they couldn't go ahead and gobble up the small banks in the State of Nebraska.

And they passed the law that the Omaha National Bank would bar any other bank coming in from Nebraska, a national bank helping out the credit, so Omaha National Bank really, in essence, had the control. If any small bank got to trouble, Omaha National Bank, or First here now, had full control.

On April 13, 1986, Omaha World Herald carried an article about my husband, Dave Sullivan, and Paul Heine. Shortly thereafter, my husband's attorney, George Qualley, threw Paul Heine out of his office. So my husband and Paul Heine went to Denver, Colorado, and talked to an attorney about——

Senator HARKIN. I'm sorry. I'm going to give you one more minute. Then you're——

Ms. GLASS. OK. The thing I'm concerned about is all the small bank failures actually caused by the actual problems of the farmers, or are they designed by the big money people to eliminate the small banker that's there helping the small community?

Senator HARKIN. Thank you.

[The material submitted by Leourieta B. Glass is retained in the subcommittee file.]

STATEMENT OF JAMES SCHMIDT, FARMER, BATTLE CREEK, IA

Mr. SCHMIDT. Yes. My name is James Schmidt, J-a-m-e-s S-c-h-m-i-d-t. I'm a farmer from Ida County, Iowa, in Battle Creek. My suggestions are—I'm in favor of Farmer Mac. I believe the Uniform Commercial Code should be limited to 1 year on the crops. Another comment I have is that anyone paying over 8 percent on borrowed money probably won't make any profit on that money. My wife and I have submitted and requested assistance under the 1988 Farm Credit Act. We're with Farmers Home Administration. We do believe that more diversified farming, such as more oats, wheat, barley, hay acres, would reduce our erosion and improve the water quality; and I do believe that's going to be a problem in the near future. I believe more value should be on the farm products as they leave the farm. I guess that's all. Thank you.

Senator HARKIN. Appreciate it. Glad you're here.

Yes, ma'am, please proceed.

STATEMENT OF RUBY ERICKSON, FARM WIFE, SOUTHWEST NEBRASKA

Ms. ERICKSON. My name is Ruby Erickson, R-u-b-y E-r-i-c-k-s-o-n, and I'm a farm wife from southwest Nebraska, 450 miles away; and we are in a chapter 11 bankruptcy with Farm Credit Services. And so my thought today is to direct my thoughts to Mr. Martin and to you, also, Mr. Harkin.

But I do know that, as a farm wife in bankruptcy, we have set up farm groups, farm support groups, and we work with them in probably a 200-mile radius. And so, in the fact that I work with these people—I'm not using any names, but I can speak for a lot of them.

And I know that if corn is cut by 23 cents, as was earlier projected, if there is another drought and if interest rates go up, that all of the farmers and ranchers that we work with are going to be in trouble. It's a statement of fact. There is nothing else you can say. And I would warrant that this would cover many areas besides southwest Nebraska.

I would like to say to Mr. Martin that you claim all land is sold back or offered back to a previous owner, and you're given 30 days, maybe, to make up that downpayment. This is not necessarily true. It doesn't always happen that way, and Farm Credit Service is not negotiating. The only way—and I'm talking southwest Nebraska—the only negotiations that is done is if it is totally in their favor.

And I can speak for myself. We just had a stipulation Friday. I haven't slept since then. We have tried for 2 years to negotiate with the Federal land bank. It is impossible.

They are real willing to work with us. We have to sign a deed of trust to everything we've got. We have to be willing for them to come onto our place several times a year to make sure that we haven't cheated them out of anything, because we're criminals because we're in debt.

They have told us that we will be able to sustain a mortgage with them and pay it off, but we are not members of the association anymore. Our membership will be withdrawn, and we are no longer considered a member, which is fine with me. But it is rather, I think—I guess what I don't like about it is the fact that the only people that Farm Credit Service is doing business with are those farmers and ranchers that are solvent. The ones like us that have had problems have been kicked out.

Senator **Harkin**. I'm going to have to let you wrap up.

Ms. **Erickson**. I'd like to say that—I guess I'm not going to say any more. I am going to say one more thing: I don't like the way they appraise. They hire an appraiser. The appraiser comes out and appraises your land. The same appraiser is also a realtor, and he turns around and sells your land, because he has appraised it so high there is no way in the world that you can pay for this land; and it's been done time after time after time. And that is all I'm going to say.

Senator **Harkin**. Thank you.

Ms. **Erickson**. And I appreciate the meeting, and I hope that if you ever get in southwest Nebraska, you would come to one of our meetings. I think it would be educational.

Senator **Harkin**. We have a lot of them in Iowa, too. I'll tell you that. Thank you very much.

STATEMENT OF PATRICK McGIVNEY, BAGLEY, IA

Mr. **McGivney**. Pat McGivney, Bagley, Iowa.

Senator **Harkin**. I'm sorry. What's your name, again?

Mr. **McGivney**. Pat McGivney, M-c-G-i-v-n-e-y.

My problems with the Farm Credit Administration regards—I have several of them, but we'll just address two of them here tonight, and that's the borrowers' right to information has not been granted to me. We have sent registered letters requesting appraisal values from them ever since 1986. They refused to give us any information. We have submitted two different restructuring plans, which have all been denied, and the first one was never even answered. We've taken it through the district courts, superior courts, to three panel judges, and nobody will even address the 1987 Farm Credit Act and these violations.

When this occurred, then we sent a registered letter to the Farm Credit Administration, notified them—I think it was in June. Nothing—that was passed on to the Farm Assistance Board. A fellow by the name of Ken Alberger (phonetic), I believe it was, and Jeanie Klink (phonetic) was the one that answered the phone. They informed me to call or write Mr. Martin.

I wrote Mr. Martin. He didn't answer it. He told Mark Browning to answer the letter. And through the process, we just keep going around in circles.

When there's violations of—the other problem is that they have haven't addressed the problem of lease cost. And the one judge mentioned in his final hearing that if we—if it was lease cost, that they must restructure. But nobody will enforce it. I have submitted a plan and all the evidence with Mr. Kirk's signature on two letters denying me those rights, or at least that he knew those rights were violated. It was never corrected.

And I guess at this point, I have to—I'm here today to really ask this Agriculture Committee to step in and start enforcing this Farm Credit Act. It's really written in the law that the Farm Credit Administration is the one that's supposed to enforce it. But when we send them registered letters and they don't do anything about it, we go back and we just go in circles.

The other thing is that we've gone through the first review committee, and that was denied. The violations were informed to the review committee. Nothing was done about it. And now we have applied or at least tried to notify the special asset group. Special asset group—we received a letter back through Senator Grassley's office; and in that letter, Jim Kirk states that my restructuring plan will never go to the special asset group because of the denied loan, and the reason it won't go there is because my foreclosure was started before August 12, 1988.

Senator HARKIN. Let me ask you this, just to short-circuit this. My staff is aware of your case. Evidently we have worked on your case.

Mr. MCGIVNEY. Yes, one of the letters come through you.

Senator HARKIN. As I understand it, what's happening is that you have a suit pending now against the Omaha Federal Land Bank, right?

Mr. MCGIVNEY. We have counterclaims in the foreclosure. However, the restructure—the law states that the restructuring should not proceed until all the restructuring rights have been granted and—if the borrowers' rights have been granted. Well, the borrowers' rights haven't been granted, because they haven't given me my appraisal values. We had a stay on——

Senator HARKIN. Well, let's—we'll look at the case again, but——

Mr. **McGivney**. Well, I might add, too, that this is documented in superior courts, and you're free to get the information from them. There's transcripts of all the hearings there.

Senator **Harkin**. All right. We'll take another look.

Mr. **McGivney**. I'd appreciate anything you can do about it.

[The prepared statement of Mr. McGivney appears at the conclusion of the hearing.]

Senator **Harkin**. This is it.

Mr. **Sullivan**. I guess my biggest complaint——

Senator **Harkin**. What's your name?

STATEMENT OF GENE SULLIVAN, RANDOLPH, NE

Mr. **Sullivan**. Gene Sullivan, Randolph, Nebraska—Cedar County, Nebraska. I am here today to complain a little bit. It's about the Farmers Home Administration and the way that—I guess you've been sitting up here. You've been talking about the—well, our other two Senators are gone, so—but there's no way the FmHA is going to have time to get all this paperwork implemented that everybody hopes they will get implemented. But I guess I never—I have—at one time, I had a farm loan with FmHA, had some serious money troubles in an area lead—that led to a chapter 7 bankruptcy.

Since that time, I have rented the farm that I deeded back to FmHA at that time, with the hopes of getting on my feet to buy this farm back.

All right. Over the period of the last 4 years, we've worked with FmHA and have rented this land from FmHA. Well, now the new farm credit rules come out, and when they come out, FmHA says, "Well, let's just make a new set of our own to go with them, to really complicate things."

Well, I guess what it amounts to, it comes down to a matter of whether or not myself and my family got a matter of form letters saying whether or not I am still a farmer—an eligible borrower or a former owner. I've lived on this farm, and I deeded back to FmHA. Ever since I've deeded back to them, I've lived there, I've rented to them, I've paid the cash rent that they've asked, I've maintained buildings which they've asked, I've did everything in the line of conservation plans and everything it amounts to.

Now, the new farm credit rules come out. Now they say as of January, whenever the new farm credit rules come out, January 1988—I got my notice *x* amount of days ahead of this, so now I no longer am a former owner. Well, if I'm not a former owner, and I've lived there and did everything I can possibly do—what am I, if I'm not a former owner? And I can't figure out why. We've appealed this thing from one end to the other, and our fair Government can't come up and figure out that two and two still make four.

Senator **Harkin**. That's part of the confusion we talked about earlier, that all of us have talked about in trying to clean up this system. That's just part of that confusion. We're trying to clear it up.

I am going to close here, basically, on that note. I think we've gotten some good information. I will close by saying that we will continue to monitor the Farm Credit System, Farmers Home Administration demonstration project's inventory land, make sure that the law—that not only the letter of the law but the spirit of the law is being followed.

Again, I would state publicly for the record that I believe the Omaha Farm Credit System, compared to the other Farm Credit Systems of the United States, is doing a good job. They've been in the forefront of advertising the land, breaking parcels down, moving ahead. I have some concerns about some of the language in the agreement, but perhaps I'll get those answered in written questions that I will submit. But I think we have had a pretty aggressive stance by the Omaha Farm Credit System in following the spirit and the letter of the law.

Again, now, Farmers Home Administration, we have good individuals from Farmers Home Administration. Bob Haegele has done a good job. He's been in a strong fight on this. But we have had, for 8 years from Washington, directions in the Farmers Home Administration that basically want to get rid of Farmers Home. They don't want it to operate anymore; they don't want to have that kind of a system any longer. So we've had to fight these battles ever since.

To get back to what Senator Kerrey said about, "Well, what are the resources we need? We've got the problem out there. What resources do we need?" Well, we know what resources we need, but we can't get over the hurdle to get the Farmers Home Administration to really do it, because they want to go one direction and we want to go another direction. So there's always that tug between the two of us: between Congress, I think, representing our constituents, and the Farmers Home Administration, representing an ideology that says, "we don't want to do this. We don't want to have a Farmers Home Administration actively involved any longer in rural areas."

So again, I'm hopeful that we'll see some new directions, perhaps a new director of Farmers Home—I don't know who it's going to be—that might change some of the directions that we've had in the last few years, maybe a new emphasis on using Farmers Home, not only for farmers, but also for rural communities, rural development, things that we talked about earlier—water, waste disposal, things like that. There's a great need for that.

So all I can tell you is that we'll take this information, we'll keep monitoring it, and we'll do everything we can to make sure that both Farmers Home and the Farm Credit System follow the letter and the spirit of the law, and try to get this land back in the hands of family sized farmers. That's what we tried—that was our goal in the Farm Credit Act, and it remains our goal today.

So I want to thank the people of Sioux City for letting us be here today. I thank all of you for coming. The Committee on Agriculture will stand adjourned. Thank you. [Applause.]

[Whereupon, at 5:15 p.m., the committee recessed, to reconvene at 10:07 a.m., Subcommittee on Agricultural Credit, Wednesday, April 26, 1989, in the Heritage Center Auditorium, Bismarck, ND.]

[Material submitted for inclusion in the record follows:]

APPENDIX

PREPARED STATEMENT OF MICHAEL D. DUFFY, EXTENSION ECONOMIST AND ASSOCIATE PROFESSOR OF ECONOMICS, IOWA STATE UNIVERSITY, AMES, IA

Good afternoon. I appreciate the opportunity to be here today.

My name is Michael Duffy. I am an extension economist and associate professor of economics at Iowa State University. I am a farm management specialist. One of my duties at Iowa State is to coordinate the Extension FarmAid program. This program was established in 1984 in response to the farm financial crisis. Another of my duties at Iowa State is to coordinate the annual land value survey. In my employment with Iowa State I work with several groups including the Farmers Home Administration, Farm Credit Services, the Iowa Farmer/Creditor Mediation Service and commercial lenders.

I would like to address this committee on my perception of the current financial conditions of Iowa farmers. Additionally I would like to comment on my perception of the implementation of the Agricultural Credit Act and problems that I see.

Net farm income in Iowa increased steadily from 1984 through 1987. Although the final numbers are not out, 1988 will probably show a reduction in net farm income due to the drought.

The financial condition of Iowa farmers also improved steadily from 1984 through 1987. According to the 1988 Iowa State farm finance survey, 48 percent of Iowa's farmers were classified as financially sound and only 6 percent were under severe financial stress. A similar survey in 1985 showed only 28 percent of the farmers in the financially strong category and 12 percent under severe financial stress.

Iowa land values bottomed out in 1986 at $787 per acre according to the Iowa State land value survey. This was a drop of over 60 percent from the 1981 high of $2,147 per acre. In 1987 land values increased 11 percent to $875 per acre and in 1988 the values jumped 20 percent to $1,054 per acre.

At first viewing and after years of negative news these statistics seem like extremely good news. Make no mistake they are good news but we must be aware of the primary source of this recovery in agriculture: the Food Security Act of 1985.

In 1987 over 18 percent of Iowa's gross farm income and over 70 percent of the net farm income was direct Government payments. For U.S. agriculture direct payments were 10 percent of the gross and 36 percent of the net farm income in 1987. The recovery in Iowa and U.S. agriculture is a direct result of the massive infusion of direct Government payments.

I do not feel that this is a healthy situation nor is it sustainable. Farmers must use this opportunity to get their financial and managerial houses in order. Unfortunately, some are not.

With respect to the Agricultural Credit Act of 1987, I would summarize my feelings by saying that the problem is not credit availability but creditworthiness. In the third quarter of 1988 only 8 percent of the agricultural banks in the Seventh District of the Federal Reserve Board reported loan to deposit ratios above the desired level. In other words, 92 percent of the agricultural banks had money to loan.

In my work with the Farm Credit Services and the Farmers Home Administration in connection with the Agricultural Credit Act they have been extremely cooperative and willing to work with the Iowa State Extension Service. We have held several joint meetings with our Extension FarmAid Associates and FmHA and FCS representatives. The purpose of these meetings was to help facilitate our working with their borrowers. This open, working relation has been crucial in assuring that Iowa farmers know their rights and exercise them to the fullest extent possible.

As I noted, the problem is not credit but repayment ability. Getting land into or back into the hands of a farmer who will lose it in a short time does no one any good. Neither does it do any good to develop a class of farmers who must rely on subsidized interest rates or periodic debt forgiveness. Farmers Home Administration must aggressively work with their borrowers to move them into the mainstream for credit.

Since the first of December 1988 the Extension FarmAid Associates have worked with over 700 farm families in Iowa. This work load varies by geographic area in the State and by reason for visit. Approximately half of the families are under a financial stress situation and the other half is evaluating new land purchases, other expansion, or bringing in a family member.

This work load illustrates the varied financial nature of Iowa farm families. We have families that are experiencing the most stressful period in their farming lives and we have other families that can pay cash for a land purchase.

This dichotomous situation also illustrates the longrun nature of the problems we are facing. Many of the people looking at expansion today are looking at taking on more debt and buying high priced land. The major basis for taking on this new debt is the Government program payments or the drought induced higher prices. Neither of these can be counted on to continue at their present level. The point is, I think we are seeing some families setting themselves up for another fall.

In the early 1980's we had a situation very similar to triage. Some farms were alright financially, some farms were in need of financial assistance and some farms were not going to make it regardless of what happened. Today in 1989 I feel we have the situation where most farms are alright financially because of the Government programs but there are still many financially troubled farmers.

We must work toward improving the efficiency on farms. And, we must help those who are exiting do so with dignity. We have tremendous variation in the costs of production on Iowa farms. In 1987 the total cost per bushel for corn for one record group varied from $2.22 to $2.97. These are the average costs for the high-third and low-third profit cash grain farms with 350-500 acres in the Iowa Farm Business Association. It is not size but efficiency that determines the successful farm. We must encourage efficiency and not sustain inefficiency.

In conclusion, I would like to reiterate several points I have tried to make. The financial situation has improved but it is a recovery based on direct Government payments. Everyone has to be aware of the nature of the recovery. In working with Farm Credit and the Farmers Home Administration our experience has been that they have been fair and worked not only within the letter of the law, but also within the intent of the law. Unfortunately simply keeping someone on the farm is not a solution. Some farms are not going to survive in their present form no matter how much money is thrown at them. Everyone must work to improve managerial, financial, and productive skills if we are to remain competitive.

Again, thank you for this opportunity. I will be happy to respond to any questions or comments if you wish.

PREPARED STATEMENT OF JOHN MARTIN, EXECUTIVE VICE PRESIDENT AND CHIEF OPERATING OFFICER, FARM CREDIT SERVICES OF OMAHA, OMAHA, NE

Good afternoon. My name is John Martin and I presently serve as executive vice president and chief operating officer of Farm Credit Services in Omaha. In that capacity, I have had the responsibility for implementing many of the provisions of the Agricultural Credit Act of 1987. I appreciate the opportunity to appear before the subcommittee today for this field hearing and hope my testimony will help demonstrate to you our record of success in implementing these provisions.

Given the level of activity these past few months, it is difficult to believe that it was only a little over 1 year ago that the Ag Credit Act was officially signed into law. Senators Harkin, Daschle, and Conrad, because of their influential positions on the Senate Ag Committee, were key players in gaining passage of the act. With the addition of Senator Kerrey, given his background and experience in agricultural and rural development, we are fortunate to have this type of influence from Senators who represent States in the Farm Belt. I also believe that you, as U.S. Senators, can be proud of the Omaha Farm Credit District for the way it has worked to implement what you created only 1 year ago.

The time available to me is limited, so I will supply the committee with additional written testimony which provides more detailed information on loan restructuring, the number and resolution of nonaccrual loans, acquired property, and other operating results. This much is clear, however, as it applies to congressional intent in providing relief to financially distressed borrowers—the Omaha District is No. 1 in the Nation in implementing borrower rights' provisions of the act. Working together with your offices, we have established policies that not only meet the spirit and intent of the law, but in some cases go over and above the requirements of the act. For example, we applied many of the borrower rights' provisions retroactively, such as providing notice to distressed borrowers of their right to apply for the restructuring of their loans. We also chose to voluntarily expand the timeframe in which former owners could exercise their right of first refusal to repurchase their property.

Although earlier projections indicated that Omaha would need considerable financial assistance from the Federal Government to survive, we are proud to say our condition has improved to the point that very little of this assistance was needed in the Omaha District. As you know, the Omaha Land Bank was certified last fall and we were authorized to use up to $110 million in Federal financial assistance. This assistance was used to repurchase high-cost debt which brought down our average cost of funds. This will save over $40 million per year in interest costs. This is further evidence of the recovery in our district.

Overall, 1988 was a good year for the Omaha District. New loan volume is up, and our earnings and capital positions are positive. We are also proud to note that our stock is no longer impaired and all our financials will be prepared under generally accepted accounting principals. We are well on our way and are not only optimistic, but enthusiastic about the future and our ability to meet the changing needs of rural America.

Certification also brought the Omaha District an opportunity to participate in the FmHA "Demonstration Project." This project, intended to help move farm and ranch land acquired by the System back into the hands of family farmers, is now up and running and the first loan under this program in the Nation was closed just a few days ago in Iowa. As of yearend, there remains about 280,000 acres of acquired property in the four States served by the Omaha District in addition to future property that may be eligible, and we anticipate much more interest and activity as lenders and real estate brokers work with borrowers who may be eligible for this program. There is and will be land available for sale under the Demonstration Project.

Over the past year, we have worked hard to meet the requirements of the Agricultural Credit Act of 1987. Borrower rights' provisions are in place; loan restructuring continues; the merger of the land bank and Federal Intermediate Credit Bank is complete; the Omaha Farm Credit Bank has purchased in Farmer Mac; the FmHA Demonstration Project is a reality; financial assistance has been utilized and the 31 FLBA's merged on December 31, 1988, to form one districtwide FLBA to complement our 1 districtwide PCA.

The only major area left to complete is that of System structure as addressed in the act. The System Committee is continuing its study of this issue and will report to Congress; I would note that we in Omaha have taken the opportunity to join with the Spokane District in forging an operating alliance in which we can work together to eliminate duplication of services and save money. We are already actively involved in a joint venture to combine computer and data processing functions, and are examining other areas where we can share services to bring about cost reductions and efficiencies, which will continue our fourth consecutive year of operating expense reductions.

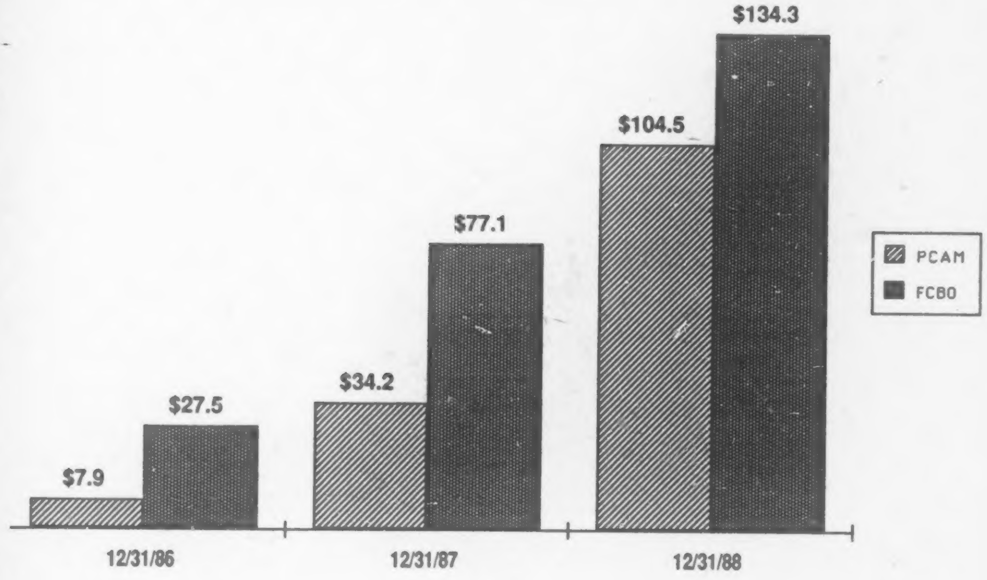
Before concluding my remarks, I would again like to thank the committee for this opportunity to discuss our progress in implementing the Agricultural Credit Act. We believe we have made honest and sincere efforts to implement policies that comply with the spirit of the act, and have worked closely with you and your staff members to make the necessary adjustments when questions or differing interpretations have occurred. I would be pleased to answer any questions or offer additional information on these points during the upcoming question and answer period.

[Attached charts and material submitted by Mr. Martin for the record: New Money/Commitments; Accruing Loans; Omaha District Delinquencies; Restructuring Activity; Omaha District Nonaccruals; Omaha District Resolution of Nonaccrual Loans; Omaha District Buyers in 1988; Farm Credit Services—Omaha Yearly Operating Expense Comparisons; Layers of Management; Farm Credit Bank of Omaha, Farm Credit Services, "FmHA Demonstration Project Underway in Omaha District"; "Iowa Realtors Urged to Support FmHA Demonstration Project"; "News Release," dated February 10, 1989; "Farm Credit Services Announces 'Farmer Mac'

Stock Purchase, Pledges Full Participation"; and "Officials Meet on Low-Cost Farm Loan Program" follow:]

New Money/Commitments

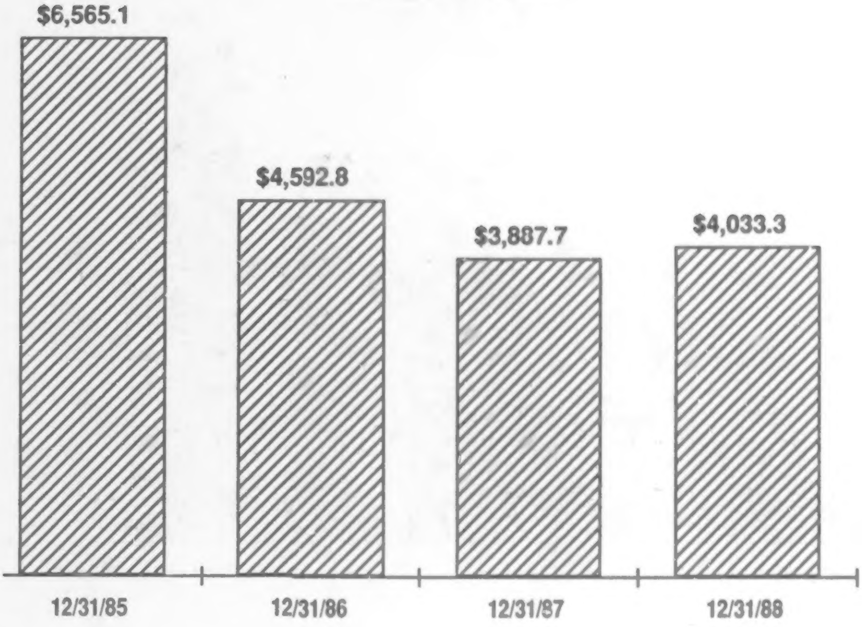
in millions



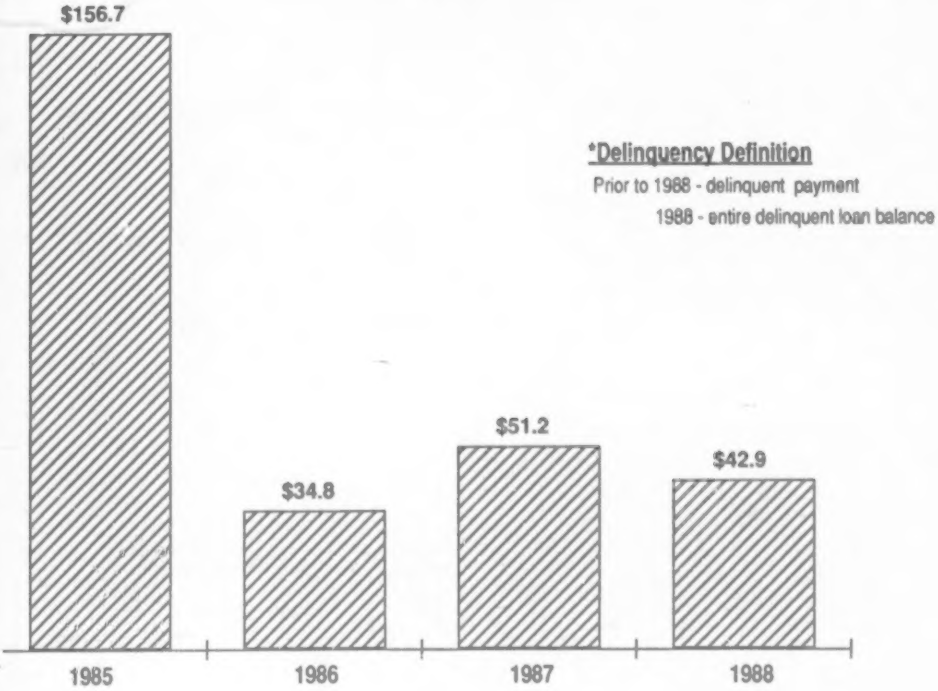
Accruing Loans (Loans, Contracts for Deed and Leases)

(in millions)

Omaha District



Omaha District Delinquencies*
as of December 31
(in millions)

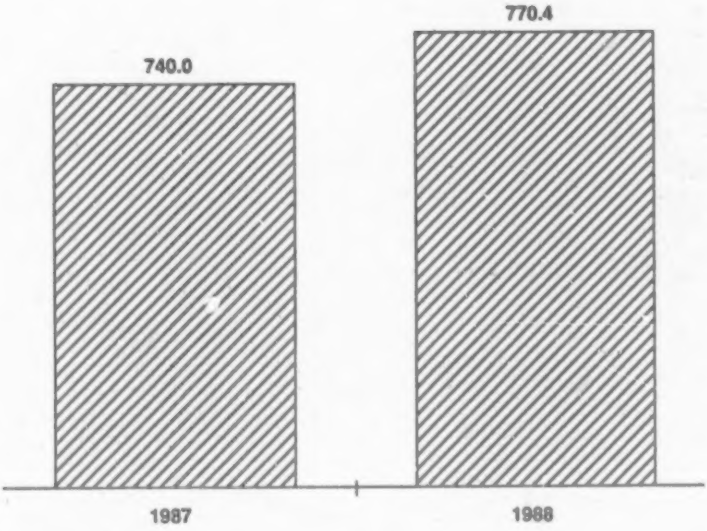


***Delinquency Definition**

Prior to 1988 - delinquent payment

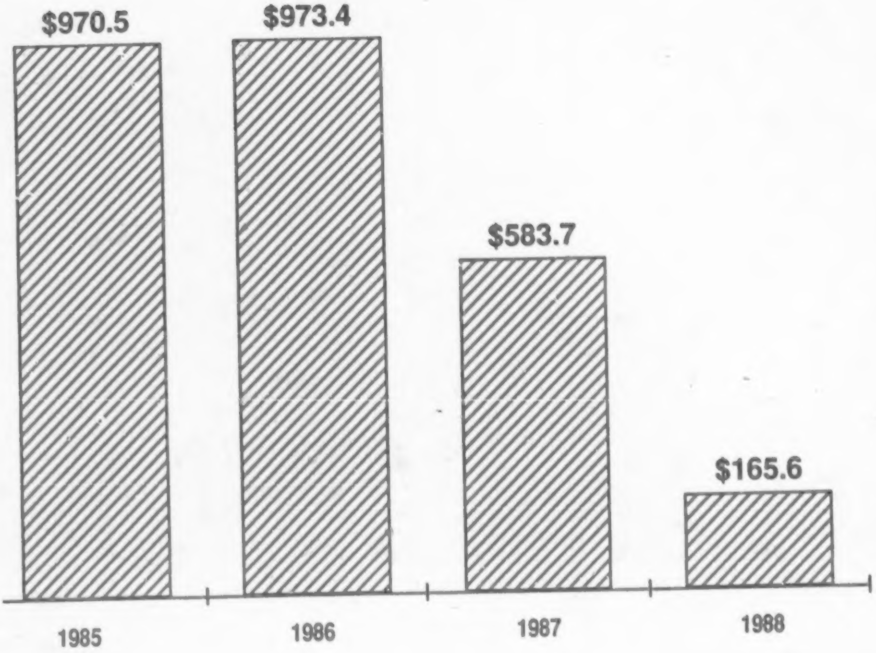
1988 - entire delinquent loan balance

Restructuring Activity
(in millions)
Omaha District



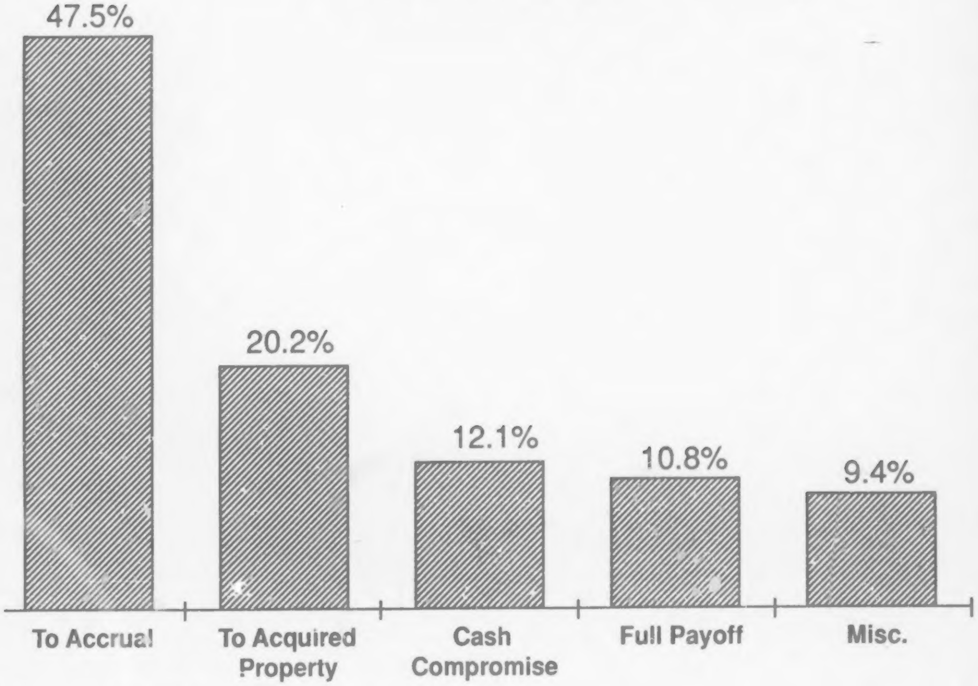
Source: Farm Credit Corporation of America (excludes reamortizations)

Omaha District Nonaccruals
as of December 31
(in millions)



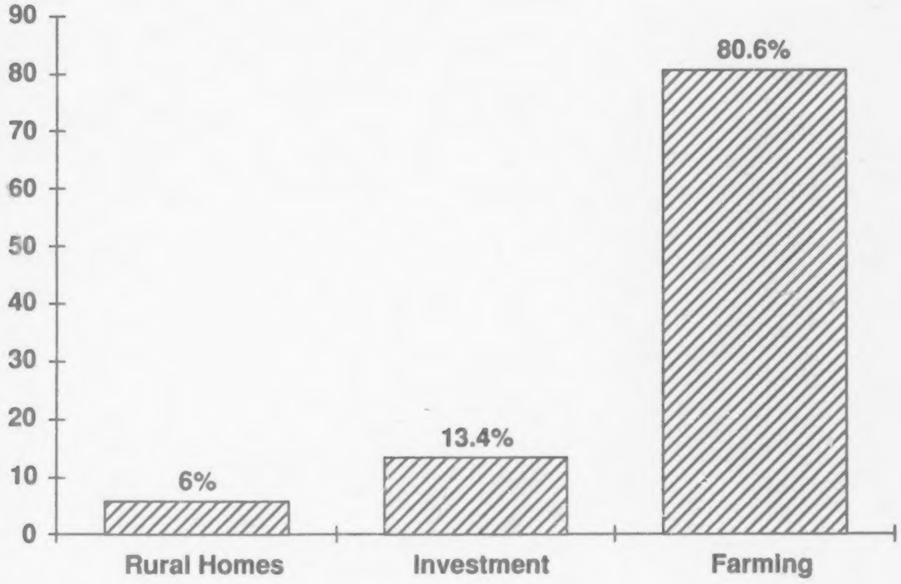
Omaha District
Resolution of Nonaccrual Loans

December 31, 1988

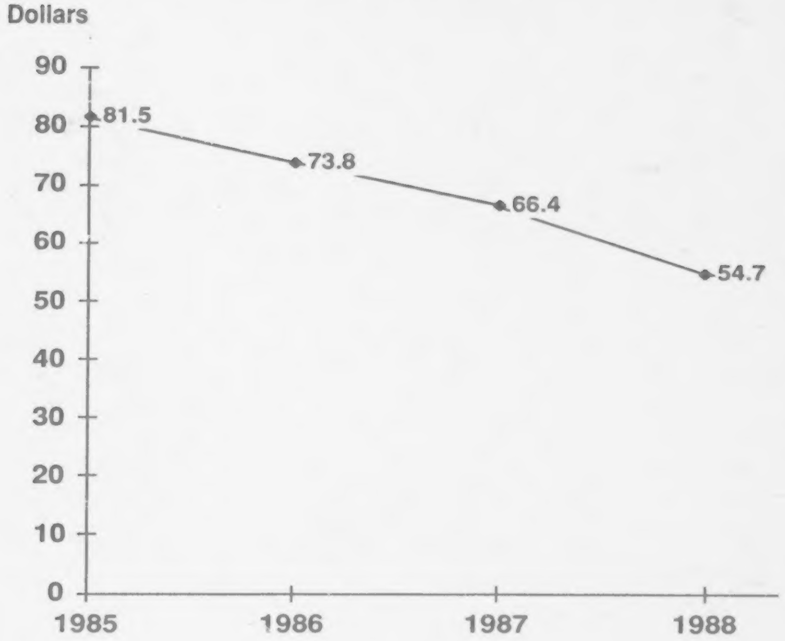


Source: FCBO Special Assets Division

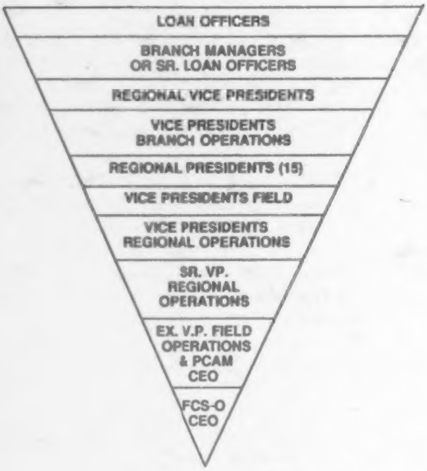
Omaha District Buyers in 1988



Farm Credit Services - Omaha
Yearly Operating Expense Comparisons
(in Millions)

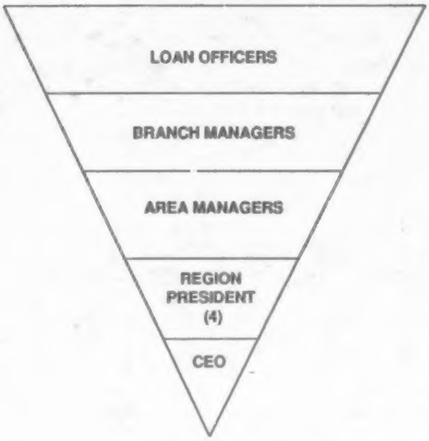


Layers of Management
9 - 86


LOAN OFFICERS
BRANCH MANAGERS OR SR. LOAN OFFICERS
REGIONAL VICE PRESIDENTS
VICE PRESIDENTS BRANCH OPERATIONS
REGIONAL PRESIDENTS (15)
VICE PRESIDENTS FIELD
VICE PRESIDENTS REGIONAL OPERATIONS
SR. VP. REGIONAL OPERATIONS
EX. V.P. FIELD OPERATIONS & PCAM CEO
FCS-O CEO

Farm Credit Services

Layers of Management
1-89


LOAN OFFICERS
BRANCH MANAGERS
AREA MANAGERS
REGION PRESIDENT (4)
CEO

Farm Credit Services

FmHA DEMONSTRATION PROJECT UNDERWAY IN OMAHA DISTRICT

Regulations for the long-awaited FmHA "Demonstration Project" were published this week in Washington, D.C., allowing the Farm Credit Bank of Omaha to begin participating in the special FmHA loan guarantee program, according to Don Korkow, vice president of acquired property.

The FmHA Demonstration Project is a special program created by the Agricultural Credit Act of 1987 in which eligible borrowers may receive up to 4 percent in interest rate subsidies on FmHA guaranteed loans for the purchase of certain Farm Credit Services farm and ranch properties. Although the program applies specifically to Farm Credit properties, buyers who qualify may obtain financing from the lender of their choice.

Korkow said the new regulations spell out FmHA's basic eligibility requirements under the program. FmHA Demonstration Project regulations specify that (1) an applicant must not qualify for regular real estate financing programs offered by individual lenders; (2) the lender must determine an FmHA loan guarantee is needed or it would not otherwise make the prospective buyer a loan; and (3) an interest rate reduction is the only way in which an applicant's operational success can be assured after the initial interest rate subsidy under the Demonstration Project expires.

Under Demonstration Project regulations, the downpayment required from an eligible borrower could be as low as 15 percent of the purchase price. Korkow noted that this required downpayment could be greater depending upon the property to be purchased, however, because of FmHA regulations that require the applicant's operation to be an ongoing, viable concern that will cash-flow, and most farm and ranch properties will not cash-flow with only a 15 percent equity position.

Properties purchased under the FmHA program must be eligible farm and ranch land owned by Farm Credit Bank of Omaha. Property owned by Production Credit Association of the Midlands is not eligible. Local FmHA county committees determine eligibility of program applicants, eligibility of any property to be purchased and acceptability of a loan for FmHA loan guarantee. Not all counties in the four-State Omaha Farm Credit district will have property eligible for use in the Demonstration Project, Korkow said.

Farm Credit Services had announced in December of 1988 that it was halting the sale of its acquired properties and marketing to the general public was resumed on January 3, 1989. In order to allow implementation of the FmHA program, Korkow said the bank has not accepted, rejected, or countered offers received on most agricultural properties thought to be eligible and will continue with this approach until approximately February 3, 1989. This will allow prospective Demonstration Project buyers to make application and submit offers before properties are sold, he said.

While the Demonstration Project provides no new rights to previous owners of farmland under the Agricultural Credit Act, Korkow said the bank will work with previous owners who follow the previously established borrower rights procedures and demonstrate a good faith effort to help them progress toward program certification and obtain a lender.

Lists of properties that may be eligible for the Demonstration Project are available through Farm Credit Services' acquired property offices. Lists are also supplied to county FmHA offices on a regular basis. Persons interested in participating in the project are advised to first contact FmHA about eligibility requirements and then obtain a lender before submitting offers on a property available for sale.

IOWA REALTORS URGED TO SUPPORT FmHA DEMONSTRATION PROJECT

Farm Credit Services officials met January 24 with a group of Iowa realtors in Newton to solicit their support of the recently implemented FmHA Demonstration Project.

The Demonstration Project is a special FmHA guaranteed loan program designed by Congress to help individuals with limited resources buy farm and ranch properties held by eligible Farm Credit System institutions. The project provides interest rate reductions up to 4 percent for 5 years to eligible individuals and also provides a 90 percent loan guarantee to an approved lender. Approved lenders could receive an even higher FmHA loan guarantee up to 95 percent by offering program participants an additional 1 percent interest rate reduction over the life of the loan.

The group in Newton included 95 real estate brokers and property sales personnel and was one of a recent series of meetings to help coordinate startup of the program, according to Don Korkow, vice president of acquired property for the Omaha bank.

"We were very pleased with the turn-out," Korkow said. "The real estate profession is a valuable source of information to the agricultural community and can help publicize this important new program in their local communities."

At the meeting, Korkow asked for support of the new FmHA program and stressed the need to get commercial lenders involved.

"Although the program is restricted in scope, it can help contribute to rural development and the creation of new farm businesses," he said. "Persons wanting to participate must have a lender who is willing to work together in preparing the FmHA loan package, and the package must show a positive cash-flow and that the request is feasible."

Local FmHA county committees will determine eligibility of the individual and the property, Korkow said.

NEWS RELEASE—FEBRUARY 10, 1989

The Farm Credit Bank of Omaha has announced that over 5,600 letters have been mailed to previous owners of farmland now held by the bank informing them of the new FmHA Demonstration Project. The project makes available reduced rate, FmHA guaranteed loans to eligible individuals. The letter, which was sent to previous owners of record since 1986, offered a brief overview of the FmHA program and how to apply.

The FmHA Demonstration Project was established by the Agricultural Credit Act of 1987 to assist the Farm Credit System sell acquired properties and help eligible individuals buy farm and ranch land. The program offers guaranteed loans which feature a 4 percent interest rate reduction to eligible individuals purchasing properties held by the Omaha bank. The bank has determined the majority of its farm real estate could be eligible for the program.

FARM CREDIT SERVICES ANNOUNCES "FARMER MAC" STOCK PURCHASE, PLEDGES FULL PARTICIPATION

Farm Credit Services of Omaha has announced a major stock purchase in the newly created Federal Agricultural Mortgage Corporation, also known as "Farmer Mac." The $900,000 investment will allow the Farm Credit Bank of Omaha to originate and "pool" agricultural real estate and rural housing loans under the Farmer Mac program, according to Terry Fuhrman, senior vice president of correspondent lending for the Omaha bank.

An initial stock investment is required for any financial institution who wishes to participate in the Farmer Mac program. The program, created as a part of the Agricultural Credit Act of 1987, sets up an additional source of funds for farmers, ranchers, and others with a need to finance agricultural land and rural homes.

"This purchase of almost $1 million in stock shows our commitment to the Farmer Mac program and our intent to participate to the fullest extent possible," Fuhrman said. "We plan to be active poolers of loans made by lenders outside the Farm Credit System as well as loans which originate in our own lending offices."

To give adequate support and concentrate bank efforts on the Farmer Mac program the bank has created a special, separate correspondent lending department. The department will coordinate the Farmer Mac program in the Omaha district as well as loan participations with other lenders such as commercial banks.

Under the Farmer Mac program, loans are originated at individual financial institutions and then "pooled" together. These "pools" of loans are then registered as Farmer Mac guaranteed securities by the Securities and Exchange Commission for further resale to investors, essentially providing yet another avenue of financing for ag real estate and rural home loans.

OFFICIALS MEET ON LOW-COST FARM LOAN PROGRAM

Officials from Farm Credit Services (FCS) and Farmers Home Administration (FmHA) in Nebraska and Iowa met January 20 in Omaha to coordinate procedures for the recently enacted FmHA Demonstration Project, a low interest rate FmHA guaranteed loan program for purchasing certain farm and ranch property from the Farm Credit Bank of Omaha.

Meeting in Omaha were Robert Haegele, FmHA chief of farmer programs for Iowa; Robert Jedlicka, FmHA chief of farmer programs for Nebraska; Don Korkow, Farm Credit Services of Omaha vice president for acquired property; Farm Credit Services property managers for the Omaha district and other top officials from FmHA and FCS.

Korkow said the purpose of the meeting was to discuss ways to accelerate coordination at the local level among Farm Credit Services, FmHA county offices, and commercial lenders. Farm Credit Services is advertising properties believed to be eligible for the program and several offers on properties have already been received.

According to Korkow, the key to the project's success will be the ability of commercial lenders, FmHA, and Farm Credit to move quickly and deliberately in step with each other.

"The FmHA Demonstration Project is a guaranteed loan program which relies on the applicant's lender of choice to extend credit," Korkow said. "Farm Credit will not be able to satisfy all the credit demands of applicants under the program; our acquired property people have been instructed to work with all lenders and provide assistance as necessary to move the Demonstration Project forward."

Under the FmHA Demonstration Project, the downpayment may be as low as 15 percent with an interest rate reduction of as much as 4 percent. An additional 1 percent interest rate reduction is possible in some situations. Program applicants must be able to show a positive cash-flow and the operation must show practical workability after the loan package is completed. FmHA county committees determine eligibility of the applicant and the property and both must be consistent with congressional intent in helping limited resource individuals expand their agricultural land base into an operation not larger than a typical family size operation for the area, Korkow said.

Farm Credit Services serves farmers and ranchers in Iowa, Nebraska, South Dakota, and Wyoming. Properties offered for sale have been acquired as a result of loan restructuring, compromise of indebtedness, or foreclosure and are offered to the general public at fair market value.

PREPARED STATEMENT OF MIKE THOMPSON, EXECUTIVE DIRECTOR, IOWA FARMER/CREDITOR MEDIATION SERVICE, DES MOINES, IA

Mr. Chairman and members of the Agriculture Subcommittee:

I am honored to have the opportunity to speak regarding the implementation of the Agricultural Credit Act of 1987 and the implications of this act. As the executive director of the Iowa Farmer Creditor Mediation Service, I have 3 years of experience in mediating farm credit disputes. Our program has processed over 8,000 cases during this time period, and we have helped 4,500 farmers and creditors in resolving their problems. While the statistics are significant, the most important outcome has been to change the climate between farmers, their advocates, and creditors. Today's climate is one of resolution as opposed to the adversarial climate of 1985. While Iowa and part of the Midwest have moved to this climate, my understanding from farm advocates, Farmers Home Administration, and Farm Credit Services is that this is not true in other States. This does not mean that the problem has ended for Iowa, but it suggests that Iowa and the Midwest have taken the lead in implementing the Agricultural Credit Act of 1987. My testimony reflects the methods by which we have made these changes.

In noting the changes, it is important to note three areas critical to implementing the act—the initiation of mediation services, servicing actions mandated for Farm Credit Services, and similar actions by Farmers Home Administration. In reviewing the growth of mediation services as mandated by the law, the crucial element missing is the establishment of "neutral" mediation programs. Unlike Iowa and the surrounding States that initiated mediation programs, most of the country does not have the availability of neutral mediators. Because of this absence of neutral mediation programs, most creditors are threatened by mediation even though there is substantial evidence that it costs less than litigation (from bankruptcy to foreclosure) and that it actually reduces the number of chapter 12 filings (in Iowa the filings today are less than 25 and most of these represent cases which FmHA initiated prior to the implementation of the Ag Credit Act in December 1988). Additionally there is not any evidence to support that mediation has dried up credit, as credit has flourished in the last 6 months.

This fear is heightened by differences among mediation programs. In some States farm advocates see themselves as mediators, and this increases the concerns of creditors. In other States the mediators are responsible for designing proposals for the farm client, plus they are expected to "sell" these proposals to the creditors. While these variations might have some validity, they certainly are not neutrals as each has an investment in the outcome. On the other hand, the regulations promulgated by FmHA for uncertified States (only 14 are certified) indicate that FmHA employees will serve this function. While FmHA employees, advocates, and proposal developers are available to help people, none are effective neutrals. Moreover, few of these groups have ever received mediation training that promotes neutrality. Accordingly, few of these people work to establish a climate of resolution that is essential to resolving ag credit issues, and most of their time is spent defending their lack of neutrality.

Besides the problem of neutrality, mediation programs encounter funding concerns. The programs with mandatory mediation (Iowa, Minnesota, and South Dakota) have large caseloads, and they have a cost per case that ranges from $200 to $500—well below the costs of going to court even for a simple matter. Voluntary State mediation programs do not have large caseloads, and as a result have smaller budgets and higher costs per case that approximate court costs. These programs are not funded as readily, and the Ag Credit Act can only be helpful if it maintains the current practice of a matching of Federal funds.

While 14 programs have been certified by FmHA for 1988 at a funding cost of $3 million, it is projected that a minimum of 22 States will be eligible for 1989 with only $2 million available. This reduction in cost per State will effectively reduce the opportunity to use mediation as a conflict resolution technique. It should be noted that FmHA has received estimates for using outside mediators from a sister government agency, the Federal Mediation and Conciliation Service that project costs per case at $1,000. While the Congress is facing a budget crisis, it would be a cost savings to maintain the matching funds for mediation from FmHA's operating budget if programs can perform mediations at less than $1,000 per case. Also this figure should be used as a barometer of cost per unit service for evaluating programs. Obviously program startup costs should be taken into consideration in evaluating cost per unit service.

In concluding my comments on mediation, it is critical to recognize that mediation and debt settlement must be implemented in a flexible fashion. Farm credit mediation cannot be controlled by FmHA, nor can it be allowed to be controlled by advocates of farmers. Establishing a framework for neutral programs is essential to making mediation valuable for the Government, the creditors, and the farming population.

In reviewing the implementation of the act with respect to FmHA and farm credit banks, the following data describes how changes have occurred in Iowa. The Farm Credit Banks of Omaha were open to discussion re: the implementation of the act as early as January 15, 1988. By late January the bank personnel had met with the Mediation Service personnel to develop an agenda for action. A meeting sponsored by the Mediation Service was held between the banks, farm advocates, and congressional staffs. While the first meeting was tense, it became clear that the advocates were not satisfied with what was offered. After considerable discussion the meeting became a negotiation where the advocates, congressional staff, and farm credit developed an approach for implementing the law. This meeting set the stage for the current practice which is one of mutual problem-solving. In my estimation very few problems exist, and farm credit has not been seen as a problem except in rare instances. It is my belief that the Farm Credit Bank of Omaha is implementing the act more congruently with the intent of Congress than any other district. Debt restructuring, mediation, and the sale of inventory land are occurring without an economic loss for the banks, and farm clients are being approached in a manner that resolves problems.

FmHA in Iowa has also demonstrated a desire to work through the act. While the Iowa office has been slowed by the pace of the regulations, it appears that they have every desire to inform farmers of their rights. Iowa's rate of response to the the servicing letter is above 66 percent, and it reflects FmHA's decision to inform borrowers by working with the Mediation Service, Legal Aid, and other concerned groups. Unlike the Bank of Omaha, FmHA appears to have less flexibility in working through cases—much of this problem seems to stem from the reliance upon the DALR$ as the bottom line for negotiation or mediation. In working with Iowa and many other States, it is clear that the DALR$ program cannot be substituted for interpersonal skills, and that FmHA staff must receive additional training re: negotiations. While this is occurring, it appears that many States will not receive training prior to the beginning of negotiations. For those States with certified mediation programs, this problem can be overcome, but for those without mediation programs the problem will be exacerbated. Consequently, it appears to be in FmHA's interest to promote mediation.

In closing it is critical to note the importance of working with FmHA, FCB, and other creditors to make the Agricultural Credit Act of 1987 successful. I hope that Congress can recommend that FmHA, FCB, and other entities work with their borrowers and the advocates to make a meaningful implementation of the act. If States cannot work together, it is clear that the act will not be implemented in a win/win fashion—one that minimizes loss for the Government while keeping as many borrowers on the farms as possible. I would urge Congress to promote meetings between farmers and these groups facilitated by a neutral party in each State. FmHA and FCB have more to gain if they clear the air, and promote their perception in a meeting with borrowers. The history in Iowa suggests that this can minimize problems before the actual implementation of the law for individual cases. It also is clear that this will minimize lawsuits that only delay resolving the problems.

PREPARED STATEMENT OF RANDY LANNING, EXECUTIVE VICE PRESIDENT, WAKEFIELD NATIONAL BANK, WAKEFIELD, NE

My name is Randy Lanning. I am the executive vice president of the Wakefield National Bank in Wakefield, Nebraska. Wakefield is located in northeast Nebraska 35 miles southwest of Sioux City. Wakefield has a population of approximately 1,100. The main employer is the Waldbaum Company which sells fresh eggs and egg products both nationwide and internationally. The majority of farmers in our area maintain some type of livestock operation. We have a number of irrigated farms in our area but the majority are dryland.

The Wakefield National Bank has assets of $16 million with loans of $7 million. Eighty (80) percent of our loans are agricultural loans.

The farm crisis hit the Wakefield area very hard. In the winter of 1984–1985, the Wakefield economy was devastated. There were days that winter when the entire main street of Wakefield was deserted. Local businesses had days without seeing a single customer. Confidence in the future was nonexistent.

At the bank, we had many problem loans and we were very concerned about the future of the bank. In January of 1985, we attended a Nebraska Bankers Association meeting where officials of the Nebraska office of the Farmers Home Administration explained their guaranteed farm loan program and encouraged us to take advantage of the program. We decided that day the FmHA guaranteed program was the solution for the bank and our customers. We proceeded to obtain 57 separate guaranteed loans for 35 different farm customers for a total of $5,500,000. More than 50 percent of our loan portfolio is now guaranteed by the FmHA.

The FmHA guaranteed program allowed us to restructure the customer's debt over a number of years according to their cash-flow, and enabled us to continue to finance their operations. Without the FmHA guaranteed program, many of our farm customers would not have been able to continue farming.

When we originally put these FmHA guaranteed loans together, we honestly felt a number of the marginal customers would not survive. However, a surprising thing has happened along the way. Most of these marginal customers have made considerable financial progress and are now excellent bank customers.

The FmHA guaranteed program forces the farmer to budget and monitor his costs. We believe the program has helped our customers become better managers.

We would recommend and encourage other banks to utilize the FmHA guaranteed program to the fullest extent and we hope that Congress will continue to allocate funding for the guaranteed program.

We are excited about the new Farmer Mac program. We have purchased stock and we intend to be an originator. We believe the real sleeper in the Farmer Mac is the rural housing program. There is a definite need for long-term fixed-rate real estate loans. Such financing is almost nonexistent in many rural communities. We would recommend the present population maximum be increased from 2,500 to 10,000.

We have been involved in six chapter 12 bankruptcies. Obviously from the banks point of view, we have not been happy with the results. However, we have found that the process works fairly quickly. The problem we have with chapter 12 is writing down the debt to the value of the collateral with no provision for any recovery if the value of the collateral subsequently increases. In our area the value of land has increased 20 percent in the past 2 years. We would recommend chapter 12 be revised to allow banks to participate in this increased valuation.

We are opposed to mandatory mediation. We believe if both parties are truly willing to negotiate, a settlement can be reached.

We are very concerned about the drought. The soil moisture in our area is very low. If the drought continues through this summer, we will face severe financial stress in our community. We encourage Congress to monitor this situation and provide assistance if needed.

We are also concerned about the increase in interest rates. If rates continue to increase, we are concerned the farm recovery will come to a screeching halt.

Over the past 3 years, our farm customers have made considerable progress and barring a devastating drought, higher interest rates, or recession, we are cautiously optimistic.

We have had an amazing economic recovery in the Wakefield area. There are days now where it is difficult to find a parking spot on main street.

PREPARED STATEMENT OF MARK BAXTER, FARMER, ROCKHAM, SD

Good afternoon. My name is Mark Baxter, and I am a farmer from Rockham, South Dakota, and a borrower of the Farmers Home Administration, now being considered for loan servicing under the Agricultural Credit Act of 1987.

I really appreciate this opportunity to testify here today. I'm glad to have the chance today to make my suggestions on how to improve FmHA's implementation of the new Credit Act.

I am speaking on my own behalf, and for Dakota Rural Action [DRA]. I am a member of DRA, which is a grassroots, citizens' organization made up of farmers, ranchers, church, and small business people in South Dakota. Many DRA members worked for the borrowers' rights and debt restructuring provisions that were included in the Agricultural Credit Act of 1987. We thank those of you on the Agriculture Committee for your good work in seeing to it that FmHA borrowers, like myself, have a chance to restructure our debts when this is cheaper than the cost of foreclosure.

We are glad that FmHA has developed regulations in response to concerns raised by groups like ours around the country. We firmly believe, however, that had FmHA done its job to begin with and issued proper regulations in June of 1988, farmers like myself would have gotten our debt restructuring notices in late summer or fall—instead of at the end of the year, when it was a lot more difficult to get our forms completed.

I have four main recommendations regarding FmHA's implementation of the new Credit Act. I'll use my own case to illustrate some of these points. The reasons that I became delinquent were due to circumstances beyond my control, including a combination of low commodity prices, the FmHA's management decisions regarding my operation that caused me and FmHA to lose more money. I'm leaving documentation on this with Senator Daschle, whose office has tried to help in the past.

1. FmHA's use of the DALR$ program, and their determination of whether or not a borrower is eligible, should be based on accurate, understandable figures. FmHA should also explain completely the computations that they use in determining whether a borrower is eligible, and justify their figures before deciding that a borrower isn't eligible.

They have not done this in my case. I applied for debt restructuring on December 27, 1988. I was called into the county office on February 6, 1989, and told that I would receive exhibit E, the 1951-S form in 3 days. You will find this as attachment 1. I was also given the summary of the DALR$ program analysis of my application (attachment 2), and the figures that FmHA used in my Farm Plan (attachment 3) that appear to have been plugged into the DALR$ program.

There are many confusing things about this information. First of all, the figures that FmHA put together on attachment 3 are not what I submitted. I submitted a Farm Plan in my application, but what you see is *their* Farm Plan. I was never given an explanation by FmHA of why these figures were used instead of what I believe to be my more accurate figures. There are errors on this form, which I have highlighted, amounting to over $8,758 in income and $15,843 in expenses.

Second, FmHA gave me the printout, attachment 2, which explains their calculations for the net recovery value of the property and their forced liquidation costs. These are confusing. I have been referred to mediation, through exhibit E, and I was not given the opportunity to sit down with the county office to go over this printout or to point out the differences in FmHA's figures against my own. I'll be doing this before my mediation meeting, but it looked fairly cut and dried when I met with them on February 6 that these are the figures and that's that. They did tell me that if I put more land in CRP, they'd reconsider my application for debt write-down before I go to mediation.

I think that this is an arbitrary way of dealing with things. DRA members in both Hamlin and Deuel Counties [SD] have reported that the FmHA County Supervisors there are meeting with borrowers and going over the figures in the DALR$ printouts, before sending out exhibit E. It appears that FmHA is handling things differently from county to county.

Many FmHA borrowers are in the same boat as I am.

2. FmHA should conduct appraisals based on the capitalization value of the land, and, when using comparable sales figures, should clearly define what constitutes a comparable sale. FmHA should also use consistent appraisal methods, and give borrowers notice when they are conducting an appraisal. Finally, the FmHA State office or national office should set forth guidelines for County Supervisors to follow in selecting the independent appraisers by defining, in writing, that an independent appraiser is *not* employed by, or contracted by FmHA in any capacity or in any county. We think that this is especially fair since the borrower has to choose from a list of three FmHA-selected independent appraisers, and has to pay for an independent appraisal themselves.

In my case, it appears that the only figures that FmHA used to decide the value of my land were comparable sales. The November 2, 1988, appraisal report form (FmHA form 422-1) which is found as attachment 4 was done 2 months before I applied for loan servicing. It appears that the only figures used in my appraisal were comparable sales; the form doesn't include any space for calculating the capitalization value of the land or other methods used to appraise property. I can't tell whether FmHA used any sort of calculation based on the productivity of my land in making their appraisal.

Also, when the contracted appraiser came to my farm to appraise my machinery, they represented themselves as not working for FmHA, but then, at the end of the appraisal, they said that if I had any checks with FmHA's signature on them, they would pick them up. I question why any contracted appraiser is collecting funds for FmHA.

FmHA's choice of "independent appraisers" is left up to the discretion of County Supervisors, according to the South Dakota State FmHA office. They inform us that the term "independent" is not defined, and could mean that an appraiser who has done appraisals on one piece of ground in a county, but not on the same piece of ground in question, could be considered "independent" for the purposes of the second piece of ground. Guidelines or regulations from Washington would clear up this concern.

3. The Farmers Home Administration should carry out the notification requirements in the Ag Credit Act simply, and without the confusion and misinformation that we all just experienced.

The Ag Credit Act gives borrowers 45 days to state in writing that they want loan servicing. It doesn't tell FmHA that all forms in a completed application must be submitted by a borrower within 45 days in order for them to be considered eligible for loan servicing. Somehow, FmHA has managed to confuse what should be a fairly simple process.

According to the director of farm programs in the South Dakota State FmHA office, loan servicing packages were sent to 1,646 "active delinquent" borrowers. In most instances, these figures do not include those who are in nonmonetary default or bankruptcy or "collection only" accounts; a few hundred more packets were sent out to these individuals, so a total of over 2,000 packets were sent out.

Of the 1,646 packets sent out by certified mail to those considered to be "active delinquent" borrowers, responses were received from 1,199.

This leaves between 321 and 350 borrowers in South Dakota who either did not respond at all, and/or who were determined by County Supervisors to be ineligible for further consideration for primary loan servicing.

The State office has told us that they know of no County Supervisor who determined that a borrower was ineligible because they submitted an incomplete application, but the office also said that there was no consistent criteria used from county to county to determine this, either.

4. We further recommend that FmHA establish a time after the 45 day time required in the Credit Act, by which a borrower must have all of their application materials submitted, so that FmHA can determine that the application is complete. Only when the application is complete should FmHA begin processing the application, using the 60-day timeframe required under the Credit Act.

The FmHA office also told DRA that 60 days from the date that a County Supervisor receives any kind of response to a loan servicing application—be it a complete application or a request written on a napkin—FmHA is to have processed the loan servicing application and determined eligibility

It is not now FmHA's interpretation that their 60 day processing time begin when *all* application materials have been submitted. And FmHA has not yet developed clear guidelines or timelines that would say at what point, exactly, a borrower would be considered ineligible for further consideration for failure to submit all the forms required to process a loan servicing application.

Much of this confusion could have been avoided if FmHA simply followed the intent of Congress in carrying out the act.

The next 60 days are critical to most of the 1,600-some borrowers in South Dakota who are going through FmHA's loan servicing process. Your help in working with FmHA to correct some of these problems is appreciated.

Thank you for the opportunity to testify.[1]

PREPARED STATEMENT OF EUGENE SEVERENS, CENTER FOR RURAL AFFAIRS, WALTHILL, NE

Mr. Chairman, thank you for this opportunity to provide testimony on the Agricultural Credit Act of 1987. The Center has testified before this committee on a number of occasions both before and after passage of the 1987 act and has been active monitoring the implementation of key components of the act. We are especially pleased to have the committee meeting so close to home.

Time limits will not allow me to cover all the details on each of the six major areas I would like to discuss, but I have included some supplemental materials that I hope could be made a part of this hearing record. This testimony and these materials were jointly prepared by Jerry Hansen, Nancy Thompson, and Annette Higby, as well as myself. The six areas include:

1. Sale of FmHA farmland inventory;
2. Sale of FCS farmland inventory through the "Demonstration Project";
3. FmHA participation in mediation;
4. Problems in FmHA's previous owner's buyback program;
5. Tax problems associated with the 1987 act; and
6. The role of agricultural credit in rural development strategies and the future of FmHA.

While all of these points are important, I will summarize the first five in order to leave some time to take a look into the future of the Federal role in agricultural credit and how it fits into a broader strategy of rural development in the farming-dependent rural America.

1. SALE OF FMHA FARMLAND INVENTORY

Sales of FmHA inventory property have begun, and thanks to the 1987 act reforms, the principle that family size farmers and ranchers should have the "first crack" at buying this land has been firmly established and, I'm happy to report, incorporated into FmHA regulations. Preact abuses of sales to investors and other ineligible landbuyers appear to have been cutoff.

As a result of this reform, we estimate that some 8,000 new opportunities for beginning and reentry farmers will be created over the next 4 years. In some States in the Midwest, the number of FmHA farmland parcels average 3–4 per county, so this inventory resale will have a substantial impact on the land tenure patterns and on the local economy. These targeted sales will go to farm families who otherwise would not be able to afford these purchases, and their entry into rural communities will provide a permanent spark to the economic development of that community.

This single, little noticed reform—lost amidst the other issues in the 1987 act—will become the biggest redistribution of Federal farmland since the Homestead Act. And to anticipate item 6 below, this redistribution policy is a major rural development strategy.

2. JOINT FCS/FMHA "DEMONSTRATION PROJECT"

The results of the demonstration project for the sale of FCS inventory farmland continues to have many problems. These have been discussed in our testimony before this committee on June 16 and September 30, 1988, and members of this committee along with Senator Exon of Nebraska have been involved in helping resolve these issues. Ongoing delays by FmHA, FCA, FCS Assistance Board, and the certified district banks have frustrated the implementation of this program as each agency take turns blaming the others for the programs' problems. In all this process, no one has ever faulted the concept or mechanisms of the law.

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[1] Attachments 1–4 of Mark Baxter will not be a part of the printed hearing record.

In the Omaha district recent aggressive marketing of inventory—without the use of the program—have drastically reduced the potential of the program in the four-State area (IA, NE, SD, WY). The Omaha district gives the public appearance of being enthusiastic about the demonstration project. Just 2 weeks ago, they made the first demonstration project sale in the country, but this was only *after* they had sold off the bulk of their inventory land during the 1988 sales efforts reducing the potential of the program.

There is considerable potential for the demonstration project in the St. Paul district (MI, WI, MN, ND) and theoretically in the Jackson FLB (AL, MS, LA) which is in liquidation.

3. FmHA Participation in Mediation

We raised this issue in our September 30, 1988, testimony and will simply summarize this ongoing problem today. Congress' support for mediation has been valuable in stimulating the creation of State level mediation programs, and we applaud your leadership on this issue. Mediation has proven to be an effective and constructive way of resolving farm debt disputes and fully exploring ways to realistically rebuild an operation. Mediation, unlike foreclosure or bankruptcy, can keep the lender-farmer relationship intact. In all these ways, mediation is a valuable farm rebuilding mechanism that helps heal the wounds of the farm crisis and enhances rural development.

Unfortunately, FmHA's regulations do not fully implement the 1987 act's mediation provisions. The agency reserves the right to refuse to participate in mediation sessions in States with voluntary mediation programs. FmHA has also failed to require lenders with FmHA guarantees to participate in mediation sessions. For more information on these points, please refer to our September 30 testimony [June 16, 1988].[2]

4. FmHA Implementation of Previous Owner's Buyback

FmHA has failed to implement the full retroactive scope of the 1987 act's buyback provision. In particular, some previous owners of current FmHA inventory land are not being given an opportunity to repurchase their farmland under the 1987 act terms, including purchase of the land with FmHA seller-financing (FmHA "credit sale").

FmHA argues that preact notification of repurchase opportunities was sufficient to implement new terms in the 1987 act. A previous owner who could not find private financing to exercise the buyback option in December 1987 may very well be able to exercise buyback if they are eligible for a credit sale explicitly allowed in the 1987 act. Where this property is still in FmHA's inventory, these previous owners should be allowed to exercise statutory buyback rights through a credit sale.

In a closely related issue, the 1987 act authorized use of leases with an option to repurchase FmHA inventory land by the previous owner. FmHA frustrated this provision during 1988 by often refusing to include the repurchase options on leases. These former owners deserve to have these lease agreements and repurchase options put back on the table. (Additional information on items 3 and 4 is provided in attachment 1.)

5. Tax Problems Associated With the 1987 Act

Written testimony on these tax issues was provided by Annette Higby of our office at hearings held by this committee on January 24, 1989. Accordingly, I will simply summarize these points today.

Postliquidation capital gains.—The utility of the 1987 act's debt restructuring provisions and FmHA buyback and homestead protection provisions are undermined by the Tax Code's treatment of postliquidation capital gains. Because the tax basis of property owned by a now struggling or insolvent farm family may still be lower than the current value, these families can face significant postliquidation tax obligations that can slow or perhaps preclude altogether their financial recovery.

Discharge of indebtedness.—The Tax Code requires that debt which has been forgiven must be counted as income to the debtor. However, the law provides a special "solvent farmer" provision which allows farmers to exclude debt forgiveness, but this is limited to farmers who meet a 50 percent farm income test over the 3-year period preceding the discharge. Many distressed FmHA borrowers, whose debt resolutions have been strung out over years, can no longer meet the 50 percent test. As a result, FmHA debt, which gets discharged through the act's debt restructuring procedure, will become a new tax liability that will undermine the farm family's recovery. These problems are addressed by bills introduced in the last Congress by Senators Conrad and Daschle (S. 2873) [Committee on Finance, Senate.]

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[2] Oversight on the Implementation of the Agricultural Credit Act of 1987, 100th Cong., 2d Sess., S. Hrg. 100-965.

6. The "New FmHA" and Rural Economic Development

For thousands of rural communities that blanket the Great Plains and western Corn Belt, agriculture is the main resource base and should play a critical role in the task of revitalizing these economies. It's surprising, therefore, that the words "agriculture" and "rural economic development" are rarely spoken in the same breath. We believe that agriculture can be the foundation for rural economic development in this region if it is reformed to be more sustainable and more equitable. This point and others are discussed in the Center's Special Report on "Rural Economic Development: Agriculture and the Rural Community" attached to this testimony (attachment 2).

In light of the experiences of the farm crisis, we need to conduct a comprehensive review of Federal agricultural credit policies. At the same time, we need to review how these programs fit into a larger policy of rural economic development. This will be no easy effort, but in the farming-dependent communities of the country the integration is critical.

What went wrong.—In the 1970's, FmHA policymakers lost sight of the relationship between FmHA's farm lending programs and the rural economy. The original vision and mission of FmHA was to use small loans as a catalyst for creating and maintaining new farming opportunities for small family-size farms which could not get credit elsewhere. In short, FmHA, as the "lender of last resort," created *new business opportunities on the land.* This was inherently an economic development strategy that percolated through the entire local economy.

But in the 1960's, and gathering momentum in the late 1970's, the agency—policy by policy—became the lender of "least resistance" which would provide ever-larger loans to protect large, expanding operations from risks of their own bigness. We can learn a lot about revamping FmHA credit programs by reviewing past mistakes. The two major problems have been:

1. The emergency loan programs (both EM and EE) suspended individual loan ceilings and eliminated the family-size farm requirement.

2. The shift to guaranteed lending has redirected appropriations to bigger, established operations; creating new operations are simply not reached by guaranteed lending.

We at the Center are developing programs for a "new FmHA" that will:

—restore the agency's original modest purpose;

—integrate FmHA farm lending as a consistent part of a rural development strategy; and

—incorporate carefully designed controls to protect the Federal investment from the kind of abuses and losses FmHA has experienced since the late 1970's.

This work is still in development, but I wanted to mention one of the new components today—"downpayment loans." These loans would be specifically designed to link beginning farmers with retiring farmers who, demographically, represent a growing proportion of farmland owners who will be selling property in the near future. (See attachment 3.) This approach would facilitate seller-financing with FmHA's role providing the eligible borrower with downpayment assistance. FmHA loan funds would go about five times further because FmHA would be providing approximately 20 percent of the financing rather than the current 100 percent under the current FO loan programs.

Mr. Chairman, thank you for this opportunity to provide testimony, and our organization looks forward to working with you in the future.

[Attachments 1, 2, and 3 follow:]

[Attachment 1—Testimony, February 13, 1989]

MEDIATION

One of the most beneficial aspects of the Agricultural Credit Act of 1987 is the requirement of participation by the Farm Credit System and the Farmers Home Administration in State mediation programs, and the funding of those programs. The use of mediation has greatly increased the resolution of difficult financial problems for farmers and saves farm families both the financial and emotional burden of litigation. We commend Congress' action in adopting this mediation participation requirement and urge continued appropriations for these State programs.

While Congress provided the necessary requirement for the use of mediation in farm disputes, FmHA has yet to publish satisfactory regulations implementing this congressional mandate. The Agricultural Credit Act of 1987 states that FmHA "shall . . . participate" in State mediation programs. The act's intent was very clear. Congress wanted to give Federal lenders a mandate to participate which may not have existed under State law. Despite this clear congressional requirement, however, FmHA has consistently ignored the act's provisions. In proposed regulations issued last May, in final regulations issued on August 26, 1988, on the certification of State programs, and in FmHA's interim regulations published September 14, 1988, FmHA has taken the position that they have no more responsibility to participate in mediation than any other creditor. This interpretation allows FmHA to pick and choose which mediations they attend in a program which is voluntary. In an attempt to appear at least somewhat responsive to the act's requirements FmHA has said they will participate in "mediation programs" but not necessarily in all mediations. FmHA has not, however, explained what this alternative interpretation means.

The only logical interpretation of the act's requirements as regards voluntary mediation programs is that FmHA must participate in mediation *if requested by a borrower.* This does not mean, however, that FmHA would be required to initiate mediation prior to foreclosure as they would under a mandatory mediation program. This interpretation gives meaning to both Federal and State law and is the interpretation adopted by the Farm Credit System.

FmHA Administrator Vance Clark testified before a Senate subcommittee last fall that this problem had been clarified as a result of a correction of a typographical error. This correction of the word "requested" to "required" in 7 CFR 1951.912, while needed, does not even begin to explain all of the statements made by FmHA in regulations and elsewhere regarding their participation requirement. Indeed, we have had reports from some States with voluntary mediation programs that FmHA has refused to participate in some mediation sessions. This is a blatant disregard for congressional intent and seriously damages the effectiveness of the reforms provided distressed farmers. Fortunately for Nebraska's farmers, the State Director, Bill Waldo, has taken a reasonable and proper approach to this issue by requiring FmHA participation in all mediations when requested. We commend this decision and encourage the FmHA national office to adopt a similar position.

FmHA's regulations should also be changed to require the initiation of mediation if *any* borrower is found ineligible for primary loan servicing programs. Current regulations require this initiation of mediation *only* if the borrower has other creditors besides FmHA. Mediation is useful to resolving disputes regardless of the number of creditors involved and the regulations should reflect this.

An additional problem is that farmers with FmHA guaranteed loans are unable to take advantage of this law because of FmHA's refusal to impose a mediation participation requirement on banks which intend to foreclose on farmers holding guaranteed loans. The act's language clearly extends the mediation requirement to guaranteed loan programs and all regulations previously issued must be changed to reflect the participation requirement mandated by Congress for both direct and guaranteed programs.

LEASEBACK/BUYBACK OF INVENTORY PROPERTY

Another important reform provided by the Agricultural Credit Act of 1987 is the expansion of the rights of former owners of FmHA inventory property to lease or buy back their property. The law sets out specific priorities for the purchase of farmland by stating at CONACT Sec. 335(e)(1)(C) that:

"The Secretary *shall* give preference in the sale or *lease, with option to purchase,* of property that *has been* foreclosed, purchased, redeemed, or otherwise acquired by the Secretary to persons in the following order: (i) The immediate previous borrower-owner of the acquired property . . ."

The intent of this section, like that of the language dealing with the classification of inventory property and the expansion of homestead protection rights, was to correct past mistakes and to retroactively create additional opportunities for previous owners and family-size farmers to purchase property still in FmHA's inventory.

FmHA, however, in its regulations issued on September 14, 1988, has ignored this congressional intent by not providing former owners any preference in the sale of the property if those former owners had been notified of a right to purchase the property under the old Food Security Act of 1985.

FmHA's refusal to give new notice to former owners, besides ignoring the clear retroactive intent of the language quoted above, has created many inequities for former owners. We know of cases, both here in Nebraska and across the country, where former owners were sent written notice under the old law about an opportunity to repurchase or lease their farm, but were never told about their right to repurchase the property on a credit sale, on either eligible or ineligible terms. A credit sale is similar to purchasing land on contract where no loan is required. In fact, most of these former owners were told they could only buy back the property if they obtained a loan from another lender. Other previous owners who asked about an FmHA loan were told no funds were available even though the lack of FO loan funds is totally irrelevant to the purchase of property on credit sale. These former owners, therefore, were victims of both a lack of information and misleading information. Some even gave up appeal rights because of the misleading information given them by county offices.

These abuses by FmHA has meant that many former owners who tried to exercise their option to purchase under the 1985 law were unable to do so and, according to FmHA, the options have now expired. FmHA has told these former owners their farms will be sold to the general public, some as early as this spring.

An additional violation of the Agricultural Credit Act's provisions on leaseback/buyback, besides refusing to provide new notice to former owners, is that former owners who were given a lease after January 6, 1988, the effective date of the act, were not also given an option to purchase the property as required by the act. FmHA claimed at the time these leases were signed that they were unsure of how to dispose of property and therefore would only allow 1 year leases with no option to purchase. FmHA was bound though to comply with the provisions of the 1987 act and cannot be permitted to say their confusion justified the denial of congressionally created rights for former owners.

To remedy these problems, FmHA must halt the sale of farmland inventory until former owners are afforded an opportunity to exercise their right to lease or repurchase the farm and they must be notified of the opportunity to do so using a credit sale, on either eligible or ineligible terms. The continuation of these sales under FmHA's present regulations would be a violation of the congressionally created rights of former owners to have a preference in the repurchase of their farms.

[Attachment 2—Center for Rural Affairs—Special Report, November 1988]

RURAL ECONOMIC DEVELOPMENT: AGRICULTURE AND THE RURAL COMMUNITY

WHO BENEFITS FROM DEVELOPMENT: CORPORATIONS OR COMMUNITIES?

Economic development has become a top priority for agricultural communities in the Midwest. The critical choices we make in pursuit of economic development are likely to bring significant changes in our day-to-day lives. The issue is: what kind of changes, and who will benefit from those changes?

This report argues for rural economic development strategies that benefit *communities,* and not just *corporations,* and which build on a reformed, sustainable system of agriculture.

CORPORATE OR COMMUNITY DEVELOPMENT?

The corporate approach. The stated objective of the corporate approach to rural economic development is to replace jobs lost by a depressed agricultural economy with jobs in such growth industries as telecommunications, high-tech manufacturing, etc. The basic strategy is to offer incentives for the location of these high-growth businesses in rural areas.

This strategy excludes many, if not most, rural communities. The proponents argue that it would be very inefficient to put our limited resources into agricultural communities which are economically obsolete and too small to offer a skilled labor force, financial resources, and facilities on a large enough scale to recruit or develop new industry.

They propose a *triage* process to decide which communities we should target for development and which we should sacrifice. The recent SRI International report on Nebraska's economy suggests 5,000 as the minimum population size for economic development.[1] Most "regional growth center" and "rural enterprise zone" strategies are examples of this triage approach.

The proponents of triage assume that people in small communities can be retrained and relocated to larger, more urban places, where jobs will be waiting for them as a result of economic development efforts. If a small community is lucky enough to be near an urban center, it can become a "bedroom" community.

The bottom line in terms of the supposed public benefits of this approach is job creation. That's a good selling point in rural areas with relatively high unemployment and underemployment. However, we believe that the primary beneficiaries are not rural communities, but the corporate and financial interests which are able to take advantage of the various incentives offered.

Regional growth centers and rural enterprise zones are not rural economic development strategies: they are development opportunities for corporations seeking to expand from tight urban labor markets to places where they can find a large pool of labor willing to take low-wage, part-time, and high-turnover employment.

The community and often the State offer various inducements in the form of tax incentives, grants, low-interest loans, facilities, and job training in exchange for a promise of jobs. The community may very well be expected to provide services and low-cost housing for families living on poverty wages. The issue is not which communities will win and which will lose in this process. Everyone except certain corporate interests loses. Smaller rural communities are abandoned, larger rural communities are exploited, and the public foots the bill.

The community approach. The alternative to the corporate approach to rural economic development is rural community revitalization—not just a few, select communities, but all communities which are committed to self-development. We strongly disagree that this would be a waste of our limited resources on communities which are economically obsolete, and no longer serve any important function. Rural communities are places where people choose to live and work. That choice is something we should respect. But the importance of rural agricultural communities goes beyond offering a choice of particular lifestyle. These communities serve a number of social and economic functions that are important both regionally and nationally.

Rural communities provide essential support to their farm and ranch families in the form of schools, stores, health care, etc. How will those needs be met if most rural communities seriously decline or fail?

Rural agricultural communities are still strongholds of important American social and economic values. Ownership and self-employment, in both farm and nonfarm enterprises, are more widespread than in urban areas. Community activities have a strong family orientation, and there is less division by social and economic class. Are we to abandon important social and economic values along with the communities that have supported them?

We challenge the view that we can't afford to develop these communities. On the contrary, it would be a gross waste of rural resources and an unnecessary burden on urban resources to relocate rural people to urban areas. The costs of retraining, relocation, and additional urban housing and facilities would be much more than the costs of revitalizing rural communities.

Finally, we challenge the view that these communities have no opportunities for development. That pessimism reflects the bias that development is something that must be imposed on rural areas from outside—outside industries, outside investment, outside assistance.

In fact, rural communities do have other options and many resources to build on should they choose to take on the challenge of revitalization. A number of successful community self-development efforts illustrate the potential for revitalization.[2] Some goals and strategies for revitalizing rural agricultural communities are outlined below.

COMMUNITY DEVELOPMENT GOALS AND STRATEGIES

The Center for Rural Affairs believes that rural communities should be economically, environmentally, and socially sustainable. A sustainable rural community plans for a stable rather than "boom-and-bust" economy. Its natural resources are sustained for future generations, not exploited for immediate gains. Its social and political structure includes all sectors of the community and it accepts ethnic and cultural diversity.

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[1] *New Seeds for Nebraska: Strategies for Building the Next Economy,* SRI International, 1987.

[2] "Characteristics of Entrepreneurial Communities in a Time of Crisis," *Rural Development News,* vol. 12, No. 2, pp. 1-5. Flora, Cornelia Butler, and Jan L. Flora, 1988.

Rural communities should have an equitable distribution of wealth and offer economic opportunities for all of its members. There should be broad-based ownership and control of local economic and social resources. Public resources should not be invested for the narrow benefit of a few members of the community, but for the interest of all.

Specific goals and strategies must come from the community itself and should reflect its values, resources, and economic circumstances. However, there are a number of broad economic needs and development opportunities that are common to many rural agricultural communities.

Agricultural Strategies. Although agriculture is the economic base for rural communities in this region, most of them could derive much more economic benefit from it. For example, they support sustainable family farming in order to maintain a stable and economically sound farm population. They could support the development of small scale enterprises to manufacture agricultural inputs and add value to locally produced crops. They could devise strategies for replacing imported food with locally produced and processed food. (See "Agriculture: A Foundation for Rural Economic Development" in this report.)

Retaining Dollars. Communities must look for ways to keep more dollars circulating within the community, i.e., ways to plug leaks. Retailers must find creative and cooperative ways to compete with urban shopping malls. Energy conservation could also reduce the outflow of dollars.

New Enterprise Development. New enterprise development offers a viable alternative to the corporate approach of industrial recruitment, a widely discredited but still widely used strategy. Most new jobs in the United States come from new or expanding businesses with fewer than 20 employees.[3] There are reasons to believe it can be successful in rural areas. First, rural communities have a strong tradition of self-employment which is an important assset. Second, research in Iowa has found rates of enterprise development to be as high in rural counties as urban ones.[4]

New enterprises can serve a number of economic and social functions. They can provide needed goods, services, or recreational opportunities which currently are being purchased from outside the local area or simply are not being provided. In other words, they can retain dollars within the community. They also can be a means of bringing more dollars into the community through goods or services sold outside the local area. They are a source of income for the owner-operator as well as for any employees.

Enterprise development must be carefully scrutinized for impacts it might have on the community. A new enterprise could cause existing businesses to lose trade or even close. Its activities could result in dangerous and expensive environmental pollution. If a new enterprise is owned by outside interests, not only will profits be taken out of the community, but the community will lose some control over its economic future. An enterprise might offer only low-pay, part-time, or high turnover jobs which fail to provide high quality employment to community members. Worker-owned and other kinds of cooperative enterprises need to be considered as alternatives to outside ownership and poor quality employment.

There are no magic formulas for rural economic development. Each community must find the numerous, small ways it can improve its economy and work toward its long-term goals. The following articles in this section of the report explore the planning, financial, and technical assistance needs of rural communities.

In future issues of the Center for Rural Affairs newsletter, we will be examining current and proposed economic development strategies of Nebraska and other agricultural States in this region, as well as Federal rural economic development programs and proposals.

THE COMMUNITY PLANNING PROCESS

Effective community economic development is based on a democratic process that involves people in making key decisions about their community's future. The process will result in economies that are different from those that originally shaped the communities, but if sustainable, small-scale development occurs, they can remain viable places for people to live and work. The following points are integral to a small rural community in its planning process:

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[3] *The Job Generation Process*, David L. Birch, MIT Program on Neighborhood and Regional Change, Cambridge, MA 1979.

[4] *Rural Enterprise Development: An Iowa Case Study*, Washington, DC, Council of State Policy and Planning Agencies.

1. **Broad-Based Community Involvement.** The process should include all factions and groups—especially those traditionally unrepresented in economic development, such as young people. Involving only traditional economic development groups, such as Chambers of Commerce and town councils, will limit what the community can accomplish in the long run. Who else to include? For starters, organizations such as churches, school boards, farm groups, cooperatives, and women's groups, and individuals from all sectors including senior citizens, high school students, farmers, entrepreneurs, and local business people.

2. **Structure of the Organization.** The best way to establish a lasting economic planning organization is to form an umbrella group composed of individuals and a variety of community groups who are committed to leadership. It's also important to set up a structure for continued staffing.

3. **Long-Term Goals.** A community needs to state its values in order to set long-term goals. Values questions include: What are the good things about living here? Which of these does it want to maintain? What things need to be improved? How much change is it willing to accept? The long-term goals should indicate what kind of community it wants to be in the future: a small, farming town, a regional manufacturing center, a bedroom community, etc. Quality of life goals should also be included—ones that may not be directly associated with economic viability but are nonetheless basic, such as maintaining a clean and healthful environment, and making the community a just and equitable place to live.

4. **Development Objectives.** The community needs to identify the important ways its economy could be improved and develop a priority list of objectives. For example, are the main problems the loss of family farms, not enough dollars flowing into the community, too much of the retail trade going outside the community, few opportunities for educated young people, or what?

An analysis of the local economy, to describe the flow of dollars within and out of the community, can help to identify major problems and define objectives to address them.

5. **Resource Inventory.** Communities need to identify local resources, including labor, raw materials, management talent, entrepreneurship, existing support businesses, infrastructure, etc. that could be used in meeting its development objectives. Infrastructure includes both "hard" or physical (e.g., roads, water supply systems, buildings) and "soft" (e.g., health services). Often small communities have existing infrastructure that can be converted to another use (like an unused school that could house several small businesses). Communities need to promote any excess capacity in infrastructure. In addition, it's often easier for a small town to implement a recycling process, for example, than a larger town because of the smaller scale involved.

The resource inventory should pinpoint available sources of capital and technology to achieve its economic development objectives. The community also needs to be aware of outside sources of capital and technical assistance which could be used (see the sections on **Technical Assistance in Rural Enterprise Development** and **Financing Rural Community Development** in this article).

6. **Action Plan.** The community needs to set up an economic development action plan based on its objectives, available resources, and long-term goals. What does the community want to have happen, when, how, and by whom? The plan should identify projects with the best potential of meeting the community's objectives.

People in the planning process should brainstorm ideas for meeting their priority objectives, such as establishing new businesses, then ask if the ideas fit the values and goals of the community and the available resources. For example, implementing a municipal energy conservation program could be a strategy to fulfill the objective of retaining dollars in the local economy and providing employment and training for some of its young people.

Specific proposals need to be tested for feasibility. For example, a community survey could determine spending patterns and measure market support for new businesses. The technical and financial needs of the project should be determined and the resources for meeting those needs identified. The action plan should have a timetable, and identify who will do what. It should include a process for evaluating and revising the plan as needed.

TECHNICAL ASSISTANCE IN RURAL ENTERPRISE DEVELOPMENT

What are the special assistance needs of enterprises in rural communities? A study of the 20,000 new businesses that formed between 1980 and 1986 in Iowa found that less than 10 percent asked for or received technical assistance.[3] However, many of the problems identified by the respondents, such as maintaining adequate cash-flows, management, and marketing could be addressed by assistance programs.

State programs are the primary source of technical assistance, but Federal and local programs along with some private organizations also offer assistance. In fact, most States in the Midwest region have business assistance policies that are increasingly aimed at helping small businesses. Examples are financial and business planning services; integrated data bases to inform businesses of related sources of funding; and marketing assistance and product promotion, such as expanding outlets for products processed or manufactured in the State.

For example, the Texas Department of Agriculture (TDA) actively helps producers to diversify and add value to their agricultural products. Upon request from producers, TDA conducts marketing surveys, performs feasibility studies, and helps find financing for projects.

Existing Programs. How well do existing programs meet the needs of businesses in small rural communities? In general, failures occur for the following reasons:

—rural areas not targeted for assistance;

—inadequate levels of funding—only a small percent of businesses or communities benefit;

—limited accessibility—areas that are geographically distant from the source of services, and areas that fall outside of the preferred economic growth corridors in the State may not receive adequate services; and

—lack of competency of program staff.

Local Options. How can rural communities ensure that local businesses receive the help they need? Strategies include:

—making better use of existing Government programs—demanding that they meet the needs of small rural communities;

—identifying changes needed in State and Federal policy to promote enterprise development in rural areas; and

—identifying and tapping local expertise—exploring the concept of a community setting up its own technical assistance program, using the services of local lawyers, accountants, marketing personnel, and business owners.

FINANCING RURAL COMMUNITY DEVELOPMENT

While in theory the sources for funding rural community development are numerous, practically speaking most rural communities have limited sources of development funding. However, when communities rely on outside funding sources such as Government grants, often the "tail wags the dog." That is, the outside funding source determines the course of economic development in the community. Often the result is development that is economically and socially destructive to communities. Communities can minimize this problem by using locally generated funds to leverage any needed outside investment.

In most cases rural communities will find that funding development projects requires coordinating the investments of several different sources of funds. There are generally five sources of funds: (1) individuals; (2) Government units; (3) charitable foundations; (4) lending institutions; and (5) corporations and businesses.

Proposals to fund development projects must be evaluated to make sure that they advance long-term community goals and provide for the best use of locally generated funds. Funding for development can come in three forms: grants and gifts, loans, and equity investments.

While strings may be attached to grants and gifts (for example, a requirement for a high jobs to investment ratio), in general their purpose is community betterment.

Loans and equity investments come with a wide variety of expectations on the part of their makers. Loan interest rates vary, depending on loan source and terms. For instance, a commercial bank may accept a normal rate of return on a risky project if another funding source is willing to absorb the majority of risk through a subordinated loan or an equity investment. Likewise, an initial equity investment to cover startup expenses may attract for-profit loans or investments. Individuals or Government units may accept below normal interest rates on deposits with commercial lenders when those lenders in turn make loans to development projects at similarly lower interest rates. Or Government units may guarantee all or part of a loan where a lower than normal rate of interest is charged for a development project.

The combinations of funding sources are numerous, and with creative approaches many rural communities can successfully pursue their self-development goals without mortgaging their future to outside interests.

AGRICULTURE: A FOUNDATION FOR RURAL ECONOMIC DEVELOPMENT

Agricultural Reform and Rural Economic Development

Common sense tells us that whatever task we undertake, we should make the best use of available resources. It follows then that for the thousands of rural communities that blanket the Great Plains and western Corn Belt, and cluster in other regions as well, agriculture should play an extremely important role in the task of revitalizing their economies.

It's surprising, therefore, that the words "agriculture" and "rural economic development" are rarely spoken in the same breath. For most rural economic development analysts "agriculture" is an unmentionable word: the industry is considered too weak and too insignificant to contribute to economic growth. For others, the support of production agriculture is the only solution to rural economic problems: solve the problems of farmers and everybody else's problems will go away.

Neither faction addresses the fact that agriculture has been a major factor in rural community decline for decades. Long-term changes in agricultural structure and practices have depopulated rural communities by replacing labor with capital, taken trade away from local businesses, and have degraded and polluted the environment. Because these two factions fail to see the fundamental problems in agriculture, they fail to see agricultural reform as a solution to the decline of rural communities.

We believe that agriculture can be the foundation for rural economic development in this region if it is reformed to be more sustainable and more equitable.

The articles that follow discuss the relationship between agriculture and rural community welfare, sustainable family farming as the rural economic base, and strategies for building on that base.

THE ROLE OF AGRICULTURE IN THE RURAL ECONOMY

Many analysts point out that agriculture no longer dominates the rural economy: less than 30 percent of rural counties in the United States are classified as "farm dependent" by the USDA. Consequently, they say that agricultural development, even if feasible, would not have a major impact on the overall rural economy.

These analysts seriously underestimate the economic importance of agriculture to rural communities. First of all, they have defined "rural" very broadly to include all nonmetropolitan counties in the United States, which may have cities of up to 50,000 people. Only a third of these counties are truly rural by the U.S. Census Bureau criteria of having no town of 2,500 or more. Secondly, "farm dependent" has been defined very narrowly, as at least 20 percent of county personal income generated by farming or ranching. Net income from farming and ranching is a poor indicator of economic importance.

The "farm dependent" statistics really don't give a true picture of agricultural dollars circulating in a community. Farm operations require inputs and services from mainstreet businesses and local governments. In agricultural communities, the incomes of people employed at banks, schools, hardware stores, feed and fertilizer dealers, cafes, etc. are dependent on both the farm population and the farm operations. Yet many of the counties in which farming or ranching is the only significant activity that generates wealth, i.e., little or no manufacturing, tourism, etc., are not considered to be "farm dependent." There is clearly something wrong with a definition of farm dependence that excludes 36 percent of Nebraska's nonmetropolitan counties.

Some policymakers acknowledge that nonagricultural rural development strategies face a real challenge in this region. Yet they stop short of proposing agricultural-based strategies, and some suggest that our only option is to try to manage the inevitable regional decline.

One reason policymakers are so reluctant to look to agriculture for rural economic development opportunities is their belief that agriculture is a weak and declining industry. Since there is little possibility for expanding markets, they see no opportunities for overall growth in agriculture and increases in employment. In fact, they predict declining employment on the grounds that further farm consolidation will be necessary in order for us to remain competitive.

Not everyone, of course, buys this gloomy view about the future of agriculture. There are many who claim that agriculture can recover given the right kind of farm program, and that a strong farm economy is all that rural communities really need. Those who espouse this view, have forgotten that rural communities have declined even under periods of strong agricultural growth. Why should we believe that strengthening the farm economy now will reverse the long history of decline?

FARM STRUCTURE AND RURAL COMMUNITY WELFARE

Although rural communities have been hit hard by the recent farm crisis, this is not the fundamental reason for rural community decline. A major problem that rural communities face, and have suffered under for decades, is the ongoing change in the structure of farming. The trend has been a change from small-scale, diversified family-owned and operated farms, toward large-scale, capital-intensive, specialized operations, where ownership, management, and labor are separated.

There is a substantial body of research that documents how this change in farm structure has lead to rural community decline.[5] The most obvious impact has come from the decrease in the number of farms and farm residents. Between 1950 and 1980 the number of U.S. farms was cut in half, while farm size doubled and farm residents declined by two-thirds.

It is the number of farms and the size of the farm population, not the number of acres farmed, that affects the level of local economic activity derived from farming. Consolidated farms bring less business to the local community than the total of the original farms. They have less demand for machinery parts, fuel, and services. There may be fewer buildings to construct or maintain. Very large-scale operations are more likely to bypass local retailers to buy in bulk from large, urban businesses.

When one farm operation is taken over by another, the community is very likely to lose a family. Losing farm people means losing trade for local businesses and demand for local services. This reduces profits, employment opportunities, and eventually, the number of main street businesses. More people are forced to leave the community to seek employment elsewhere. Farm families who need off-farm income will find few opportunities and may be forced to sell out to a larger operation, accelerating the community decline cycle.

A less obvious impact of the changes in farm structure is a growing economic disparity among community members. Numerous studies have found that large-scale operations with hired management and labor tend to create a wealthy, land-owning elite while laborers, small-scale farm operators and other small business operators struggle on relatively low incomes. This trend threatens the traditional, egalitarian characteristic of rural communities, as well as erodes its social and economic structure.

Clearly, an important rural economic development strategy then is to reverse the trend of farm consolidation and provide more opportunities for new and rebuilding farm operations. We believe that sustainable, family farm agriculture provides the best opportunity.

SUSTAINABLE FARMING FOR SUSTAINABLE COMMUNITIES

Agricultural communities, like mining and lumber communities, depend on and reflect the resource base surrounding them. If you arrived blindfolded in a farm town and took a walk down mainstreet, you'd be able to identify the agricultural base within seconds. The grain elevators and implement dealers give it away. The coming and going of pickups and farmers, identifiable by their clothing, caps and holstered pliers, confirms the choice.

These towns reflect their resource base so closely because they owe their existence to that base. An economic development strategy that denies that relationship is a form of *self*-denial, and from a practical standpoint, the successes of such a strategy will be limited.

For the typical midwestern agricultural community, a sustainable policy of rural economic development must be based on an equally sustainable policy for agricultural development. If agricultural development is not sustainable over the long haul, then neither is the future of those agriculturally dependent communities. This is not to say, that the community shouldn't seek to diversify its economy—it should—but in these communities our wagon is hitched to agriculture, and positive changes in agriculture will have a much more positive impact on the larger community than most flash-in-the-pan schemes that are not locally rooted.

So what are these sustainable agricultural policies and how do they affect our communities? There is no one giant "sustainable" solution with which we can instantly rebuild our communities' economies. Instead, these sustainable agriculture practices are more like bricks that can only be laid down carefully one after another to build a new structure. Here's some of the bricks:

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[5] *Technology, Public Policy, and the Changing Structure of American Agriculture*, pp. 221–249, Office of Technology Assessment, 1986.

DIVERSITY VS. SPECIALIZATION

In nature, the more sustainable communities are very diverse. Diversification or "not putting all of your eggs in one basket" traditionally was one of the basic strategies of farmers for reducing risk, and could be used to advantage in providing a more integrated farm operation. Although many have abandoned diversification in recent years, the strategy is still appropriate and can be implemented in a variety of ways in farming. For example, crop rotations that include sod producing plants and legumes result in a large number of beneficial results. Within a particular field interseeding, interplanting, use of field windbreaks, terraces, or narrow strip cropping results in increased diversity.

Livestock is an important component of diversification. They can increase the environmental sustainability of agriculture by making it feasible to include grasses and legumes in a crop rotation. They help break up the insect and weed cycles, replenish nitrogen, and reduce soil erosion. Ruminants make it possible to utilize forage grown in a rotation while at the same time they play an important gleaning and salvaging role which makes better use of existing farm resources. Hog production has always been a way to add value to feed grains grown on a part of the farm.

In addition, the number of market options increases when livestock are a part of the farm. Usually options are more limited when there is a high degree of specialization and large capital investments are made. Highly specialized livestock confinement facilities have displaced wide dispersion of livestock on the land. This has resulted in the substitution of purchased inputs to replace the beneficial relationships that result from integrating livestock, forage, crop, and pasture production.

LOW INPUT VS. HIGH INPUT

Family farms and rural communities are almost literally being liquidated to pay for high input practices and technologies. Most of these high input practices assumed that the monetary costs of implementing these technologies would be offset by increased production along with stable prices realized from a growing export market. The "farm crisis" revealed the economic hazards of high input technologies. In addition, environmental hazards represent additional costs of using agricultural chemicals. Both of the economic and environmental costs have increased the attractiveness of more sustainable, low input farming practices.

Besides being expensive and hazardous to the environment these high input technologies are constantly being changed and improved. One technology complements another, making it very difficult for small and moderate sized farms to stay on the "technology treadmill." Thus the high input technologies have become a "voluntary" means of moving farm families off the farm and in many cases eventually out of the community.

Low input farming practices are less dependent on off-farm purchased products and more dependent on making better use of existing farm resources. These include using soil building practices and the use of biological pest and weed control. This does mean that suppliers of agricultural chemicals will have reduced sales. However, farm families will continue to buy other products and services with their disposable income. If these products and services are locally owned the dollars will be circulated to a greater extent within the community rather than being funneled out to energy or chemical companies.

STEWARDSHIP VS. EXPLOITATION

Bountiful resource endowments of rich soil and pure water enabled farmers to use intensive farming practices to increase their production. This increase in productivity was at the expense of cashing in on natural deposits of organic matter, natural fertility, and soil structure along with the pollution of surface and ground water. Some argued that these resource endowments could be exploited because their deterioration could be masked by the purchase of off farm inputs. Experience has proved this wrong.

Farmers as well as residents of rural communities are now beginning to recognize the need for more sustainable farming practices. They understand that when soil erodes it carries along to rivers and streams the various chemicals that have been applied to the land. These chemicals also percolate into the ground water, polluting the drinking water of many rural communities' farmsteads.

The farming systems that exist within the boundaries of the fences are extremely complex, as are the interrelationships between the farming systems and the larger community economic systems. As a result, big solutions to farm and community problems usually fail. A more sustainable approach is to redefine each problem so that smaller, sustainable actions can be taken.

FAMILY FARMS: SUITED FOR SUSTAINABLE DEVELOPMENT

Sustainable agriculture is not a "horse-and-buggy" way of farming. It is based on a technological revolution that may prove to be as important as the mechanization and chemical revolutions of a few decades ago.

Its technologies are "know-how" intensive and resource-conserving, uniquely blending practical on-farm experiences and sensitivity with laboratory research and materials. Making the new technologies work will take a blend of individual entrepreneurialism with a willingness to experiment with unproven ideas and techniques. Making sustainable practices work also takes a long-term commitment.

These are precisely the advantages of smaller family farms. The economic and biological dynamism of smaller family farms, especially diversified crop and livestock farms, makes them leading candidates for adopting sustainable innovations. The fact is, they had begun adopting "sustainable" methods long before the term became fashionable. By contrast, large-scale industrial farming units lack both the farm-specific biological sensitivity and the long-term commitment needed to invest in sustainable agriculture practices.

From the financial perspective, family farm units are traditionally lean and flexible. Contrary to popular impressions of the current farm debt crisis, large-scale units are more likely to be experiencing financial stress than smaller units. Financially brittle larger units tend also to be more locked into farm programs requiring the comparative security of predictable program prices. Finally, these large units are locked into the mindset that capital is the leading component in agriculture development. By contrast, most sustainable agriculture technologies are less likely to depend on capital than on the individual know-how and farm-specific sensitivity possessed by family farms.

In short, large-scale, capital-intensive, specialized, program-dependent, shareholder-owned agriculture units are likely to lack the flexibility needed to take advantage of sustainable agriculture technologies. By contrast, appropriately scaled, know-how intensive, diversified, owner-operations have the flexibility and long-range perspectives to take advantage of the emerging sustainable technologies.

BUILDING ON AGRICULTURE

Production is only one part of the agriculture industry. Most of the wealth generated by agriculture is in inputs and value-added operations, not in farming and ranching, and most of those enterprises are based in urban or metropolitan areas. Many analysts have noted that this agricultural region is like a Third World country, exporting its raw commodities to be processed in the industrialized Upper Midwest or East, and importing the finished products back at much higher prices.

VALUE-ADDED

One agricultural-based strategy is to produce crops for high-value local or regional food processing, e.g., potatoes, onions, and tomatoes. One of the problems with this type of production is that it is often on a contractual basis that may limit the flexibility of the producer to make the kinds of decisions necessary for maintaining a sound and sustainable operation.

The manufacture of ethanol and biodegradable plastics from corn are also fairly common proposals. By expanding the market for corn, this strategy is likely to increase the abusive practice of high-input, continuous corn, rather than encouraging diversification and sustainable practices. We need to identify and develop value-added operations for crops that can be grown in rotation with corn, such as alfalfa and other more sustainable crops.

One issue that is rarely addressed by value-added proposals is: Who benefits from the value added by a processing operation? Does it mean higher prices or more stable markets for producers? Does it provide high quality, long-term employment for local people? Do the profits stay in the local area? Does it enhance the local revenue base enough to offset any incentives given to the developers? Does it increase the opportunities for family-scale farming? Are the farming and processing operations environmentally sustainable? Value-added enterprises can play an effective role in rural economic development if they are locally owned and operated and on a scale that is appropriate for rural communities. There are a number of small-scale value-adding enterprises that could be adopted both on and off the farm: grading, milling, wool products, cheese manufacture etc. Value also can be added by producing a higher quality product for a specialty market, e.g., lean beef, organic grains, super-clean wheat, etc.

FARM INPUTS

Farm inputs are another component of the agriculture industry that operates primarily outside the rural county. There is considerable opportunity for small-scale production of machinery parts, fertilizers, etc. that can be marketed in the local region. As with value-added enterprises, it's important that the profits stay within the community and that the scale of operation is appropriate for the rural area.

LOCAL FOOD SYSTEM

We can also look to the local food system for economic development opportunities. The agricultural heartland may try to feed the world, but it does not feed itself. More local food processing, as discussed above, should put more local foods on the grocery shelves, but local fresh produce also is a rarity. In 1983 an Iowa task force found that 80 percent of the fruits and vegetables consumed in Iowa were imported from other States. In the 1930's, Iowa was the fifth largest producer of fruits and vegetables in the country. Recapturing even a small share of that food market could result in significant agricultural development.

There are many other possibilities for agriculture-based enterprises linked to the local food system: dairy and cheese, "free-range" poultry, organic and other specialty grains and meats. Consumers as well as producers could benefit from higher quality and lower prices that local production would make possible.

Value-added processing and consumer-ready food production will mean diversification away from high levels of dependence on cash-grain export crops. However, if farm operations switch from one highly specialized production system to another, little will be gained in terms of reducing vulnerability and implementing more environmentally sound practices.

Whatever agricultural based economic development strategies we pursue, we must always ask how it will impact the structure and operations of local farms and ranches. Otherwise we will risk undermining the sustainable family-farm system which is so important to the vitality of rural agricultural communities.

[Attachment 3]

RELENTLESS DEMOGRAPHICS TO SPEED FARM CONSOLIDATIONS

The following is excerpted from an article by Matthew G. Smith, an ag economist with the Minnesota Department of Revenue, that appeared in RDP, a USDA publication. RDP stands for Rural Development Perspectives.

The future of U.S. farming may be affected as much by the slow but inevitable workings of demographic trends as by the more vivid images of farm auctions to pay off debts. Those demographic trends are the low numbers of young people choosing farming as a career and the continuing aging and retirement of current farmers.

The two factors together may hasten the decline in farm numbers, increase average farm size, affect the balance between farm operators and farm owners, and retard U.S. farming's productivity growth.

Two "booms" combined to increase the numbers of young people entering farming in the middle and late 1970's: The boom in farm exports (and farm incomes) suddenly made farming a much more attractive and lucrative career, and most of the farm baby boom was reaching the age (roughly 20–30) at which entry into farming is most common. As a result, by 1978 the average age of U.S. farmers had dropped back to 50.3 years, about the level of the 1950's.

But that too has now changed. With the numbers of new farmers again declining, with many middle-aged farmers in financial difficulty and with a steady rate of retirement of older farmers, the total number of U.S. farms may drop rapidly between now and the year 2000. If these trends continue unchecked, the share of farmland owned by absentee landlords may rise, growth in farm efficiency may slow and businesses serving the farm sector will find themselves competing for slices of a shrinking pie.

The economic environment and expectations that attracted young people to farming in the 1970's also drove up the cost of farm assets. Thus, many beginning farmers of the middle and late 1970's took on heavy debt loads in order to acquire production assets.

THE PROPORTION of debt to assets (the debt/asset ratio) is only a rough indicator of a farmer's ability to carry additional debt. But it does indicate the number of highly leveraged producers who are at most financial risk. The proportion of farms with debt/asset ratios of 0.4 or less (indicating a relatively healthy balance sheet) declines from over 96 percent among operators age 65 and over, to 59 percent among operators less than 35 years old. This relationship is not unexpected, since most farmers pay off land loans over their lifetime.

However, the proportion of operators under 45 with *both* low debt/asset ratio *and* positive cash-flow drops to less than a third. These farmers are the ones most likely to be able to take on the additional debt needed to purchase more land and machinery.

Given the recent tendency for most farm assets to be acquired by established farmers rather than by beginning farmers or investors, those younger operators are probably the group best able to acquire the assets soon to be released by retirement of older operators. Their doing so would add to the momentum for farm consolidation.

The combined effect of age, debt, and asset distributions in U.S. agriculture could be profound. With fewer entries of young operators and the retirement of older operators, the decline in the total number of U.S. farms will accelerate. If financial difficulties force out some of the younger farmers who began farming in the 1970's, the decline in farm numbers will accelerate even more.

These factors may also bring about a redistribution of farm assets and equity. Nearly half of all farm assets are owned by farmers who will probably retire within 10 years, yet fewer than one in three younger operators is in a strong position to purchase those assets.

Even without financial stress, if fewer young people enter farming, and if the United States is to maintain its current level of farm output and returns, new farmers will likely operate larger farms and earn higher incomes than in earlier generations. The financial stresses of the 1980's may serve to accentuate this trend.

Other characteristics of farms may change as well. With fewer new farmers able to buyout those who retire, and with increasing average farm size raising the costs of entry, the practice of leasing land from absentee landlords may increase. An increasing ratio of farm landlords to tenants could also make the multiple-landlord farm operation more common.

Fewer entries of new young operators and more exits of younger established operators might also have important effects on the overall efficiency of the farm sector. It was generally financial misjudgment, not technical inefficiency, that forced many operators out of farming in the 1980's. They left because they had miscalculated the future course of farm land values, not because they used inefficient or outdated production practices.

Increased departures from this group of mainly younger operators may slow the technical efficiency gains in the farm sector because older farm operators may be less likely to adopt new technologies than younger ones.

A declining number of new young operators will also affect rural businesses serving agriculture. With fewer beginning farmers, the market for farm machinery and agricultural buildings, for example, may be reduced. Financial institutions could find themselves in greater competition to serve a shrinking number of aggressively expanding borrowers. Farm cooperatives and service firms that survived the shakeout of the 1980's may find themselves confronted with an equally serious erosion of their customer base in the 1990's as their established customers gradually retire, replaced by fewer new operators with less institutional loyalty.

WHILE THE number of future entrants into commercial farming will be affected by several factors, including monetary and trade policies, the performance of the nonfarm economy in providing attractive alternatives to farming, technological changes, and domestic farm policy will also play an important role.

Debate over the direction for future farm policy should take more explicit account of the effects on young people seeking to begin careers in farming. Commodity policies designed to protect the incomes of existing operators may both encourage new entrants by providing a more secure environment for beginning firms, and discourage them by inflating asset prices and raising entry costs.

Policies to limit farm production (production quotas in particular) are likely to discourage people from entering farming. Credit programs targeted to assist beginning farmers have been deemphasized recently because of concern over production surpluses.

It might now be useful to sharpen the distinction between policies that encourage growth in total production and those that transfer production assets from one generation to the next.

PREPARED STATEMENT OF THOMAS J. MILLER, ATTORNEY GENERAL, STATE OF IOWA, SIOUX CITY, IA

Mr. Chairman, thank you for giving me the opportunity to speak to this committee. The Farm Credit System and Farmers Home Administration figure heavily in the lives of thousands of Iowa farmers. For this reason, Iowans are particularly interested in the subject of this hearing. My testimony will focus on the integral role mediation has played in assisting Farm Credit borrowers and lenders resolve disputes.

By and large, the 1987 legislation seems to be working in Iowa. My conversations with farm advocates, debtors' attorneys and Farm Credit officials reveal that the Farm Credit System of Omaha has done an about face with respect to dealing with financially distressed borrowers. Farm Credit's present posture starkly contrasts with its previous approach to credit problems.

From the beginning of the farm crisis up until approximately 2 years ago, the term "loan servicing" was synonymous with "foreclosure" in the system's lexicon. Consequently, the system and its borrowers typically resorted to the courts to resolve their differences. Delay and the cost of litigation militated against meaningful relief for either borrower or lender. Out of court settlement offers that Farm Credit considered had to pass through a time-consuming centralized decisionmaking process. This turgid approach to lender-borrower resolution of problems resulted in more frustration and delay.

Once borrowers and lenders realized that the financial survival of the system was at stake, they began to explore alternative methods of dispute resolution. Extensive negotiations between borrowers, lenders, and the Iowa Attorney General's office culminated in the establishment of the Iowa Farmer/Creditor Mediation Service in 1986. Iowa's mediation program is informal, inexpensive, and most importantly, effective. Eighty-nine percent of cases handled by the service have resulted in agreements. A Farm Credit System of Omaha study of one of its districts shows that of the borrowers who did *not* respond to the 48-day restructure letter, 50 percent of them had their loans restructured anyway. Mediation accounted for 25 percent of those restructurings. Therefore, even when borrowers do not choose to take advantage of the formal Farm Credit restructuring process, mediation can play an important role in keeping Farm Credit borrowers in business.

Our experience with the Iowa Farmer/Creditor Mediation Service is significant for two reasons:

First, it reveals the critical importance a mediation program can have in resolving creditor-debtor disputes cheaply and effectively. Iowa stands ready to serve as a model of what can be accomplished. Since its inception in 1986, the service has handled approximately 8,000 cases at a cost of about $150 per case. This figure is but a fraction of the cost of proceeding through the courts. Also, this figure is much lower than the Federal Mediation and Conciliation Services' estimated cost of $1,000 per case.

Second, the mediation service has played a large role in creating a climate of cooperation and negotiation between lenders and borrowers in Iowa. The spirit of cooperation and negotiation is manifested in many different ways. Farm Credit and FmHA officials and leaders of the borrower community regularly meet and discuss credit issues. This is one of the reasons Iowa has not experienced the problems other States have with respect to implementation of the 1987 act. Very few lenders begin collection actions immediately after the mediation period has expired. Thus, mediation often provides a starting point for a negotiation process that extends beyond the formal mediation context. The results of a recent survey show that States with mediation programs have fewer chapter 12 bankruptcy filings than States without programs. Also, we perceive a correlation between the use of mediation in Iowa and the stabilization of the Farm Credit System of Omaha.

Despite Iowa's success, much work remains to be done. Thirty-six States have yet to establish mediation programs. For the States that have programs, funding is a problem. In 1989, $3 million has been appropriated for the 14 certified programs. However, only $2 million dollars has been allocated for 1990 when the FmHA estimates that 22 States will have certified mediation programs. The need for mediation is acute. Nationally, 35,000 delinquent FmHA borrowers have responded to special action notices. In Iowa, 1,403 FmHA borrowers have responded to the notices. Consequently, the FmHA has just filed 700 requests for mediation in Iowa and expects to file an additional 840 requests. The service expects that these numbers will be increased by delinquent FmHA guaranteed loans and drought cases. To properly mediate these cases, adequate funding is a must.

Finally, we urge that an education component be added to the act's mediation provisions. So often mediation is misperceived as an arbitration process or procreditor or prodebtor. Neutrality, however, is the key to a successful program. The experience of the States that have established successful programs, such as Iowa, should be shared with States contemplating programs or having problems with existing programs.

In summation, mediation has profoundly and beneficially affected the lives of farm borrowers in this State. Your inclusion of mediation in the 1987 act is a testament to your foresight and recognition that differences between lenders and borrowers are best resolved when the parties come to a mutually satisfactory solution to their problems. Mediation has worked in Iowa. It can work elsewhere. We ask that mediation programs be funded in a manner that will ensure that other States can take advantage of its benefits and that successful programs be used as models for establishing new programs.

Thank you for this opportunity to speak to you.

PREPARED STATEMENT OF WILLIAM J. FOLKERTS, DIRECTOR OF THE FIRST DISTRICT ASSOCIATION OF LOCAL GOVERNMENTS AND BOARD MEMBER OF THE NATIONAL ASSOCIATION OF DEVELOPMENT ORGANIZATIONS, WATERTOWN, SD

Mr. Chairman, members of the committee, I am Bill Folkerts, director of the First District Association of Local Governments located in east central South Dakota. We are headquartered in Watertown, South Dakota. Also, I am a board member of the National Association of Development Organizations (NADO) which is headquartered in Washington, DC.

I thank you Senator Daschle and Mr. Chairman, for inviting me to this hearing. Thank you for allowing me an opportunity to comment on a few of the challenges facing rural America and in particular South Dakota.

The first district is a voluntary association of local governments that encourage its members and the private sector to work together cooperatively for community and economic development. We assist and provide technical assistance so local governments can operate more effectively for its citizens. We also assist the private sector businesses so they can compete in local, national, and international markets. The district's goal is to create more job opportunities and improve the quality of life for all people.

The problems of rural areas have been studied in great detail over the past decade. One study that identifies the barriers to rural economic development is the report by the Economic Research Service (ERS) of the USDA titled *Rural Economic Development in the 1980's.* Work of this committee has identified the rural problems. Therefore, I will not take time to identify the problems in detail.

During the past decade or so, while we have been busy talking about the rural problems, the amount of money available to meet the rural community development needs has been slashed. I draw your attention to the attached chart prepared by our NADO staff. Recently, we have been asked to reduce our government wants. I don't mind taking cuts in expenditures and sharing with the rest of the country when it is time to cut. But when the "good times roll" I want rural America to share with the rest of the country. We took our share of cuts and then some. But you have to agree with me rural areas have yet to share in the good times!!!

Let me turn my attention to a few specific actions that I think are needed so the rural areas can begin to share in the *good times.*

First, the Farmers Home Administration Community Facilities Grant and Loan Program has been important for our area. EPA wastewater grant funds have been cut. In the near future there will be no EPA grant funds. The community development block grant funds from U.S. Department of Housing and Urban Development have been cut. Also, the increased amount of "redtape" on each grant makes it difficult for small projects to afford the administrative cost. Congress should change these expensive requirements. The community facilities loans under FmHA have enabled communities to build firehalls, complete sanitary sewer systems, build needed rural water systems. Yet the program has been cut from $240 million to $95.7 million in 1988 and $50 million is proposed in 1989. (See attached table for these Federal cuts and others.)

It is interesting to note that EPA is imposing ever increasingly higher standards on community water supplies and community wastewater treatment. Thus, communities are required to build expensive treatment facilities to meet standards and the communities need financing. Yet the EPA grants are being terminated and the

FmHA loan programs needed by communities to finance the improvement required by EPA are being cut severely!!

- Therefore, I urge you to continue the FmHA community facilities program.
- And I urge you to fund the Community Facilities Grant and Loan Program at the 1984 level.

Second, as part of the community housing stock, many of the homes in small communities are not energy efficient. Many homes are occupied by a single person and are too large. But these larger houses when fixed up are suitable and needed for families. Without suitable housing in the small town the elderly single person has to move to a large town. Federal tax law changes and the FmHA "redtape" discourage housing development in small towns. The net effect is that developers will build larger (generally 24 units and up) projects in larger communities. These are cities where the private market can provide suitable housing for its citizens. So small communities are being left out and local residents leave to find suitable housing.

- To encourage the building of new units in smaller towns FmHA multifamily housing should be limited to communities of less than 10,000 population.
- Also, Congress should reduce the "redtape" so that new needed housing will be built in small communities.

Three, the Farmers Home Administration Business and Industrial Loan Program is needed in rural America. A partnership with local banks can add value to rural products and create jobs. Development districts have the knowledge base and the professional staffs to operate a revolving loan fund focused on natural resource development. Such a RLF with lower interest rates, and willingness to take a greater risk, could along with banks participation, encourage ag processing, encourage alternative crop utilization, and product development that will require new crop development.

- Keep the FmHA Business and Industrial Loan Program.
- Allow multicounty developments districts to operate a FmHA B&I rural oriented RLF program.

Four, over the last 8 years the way to solve the rural development problem has been to tell rural areas that the Federal Government cannot do everything for them and prepare another booklet or pamphlet telling them how to do it themselves "up by the boot straps." I have a large stack of pamphlets, books, etc. on my desk written by experts from urban areas telling rural America "how to do it" themselves. We have enough writing—it is now time to take action in rural areas! Action will come when FmHA funds are used to fund locally controlled multicounty organizations. To provide management and planning assistance to government and to the private sector. Rural America's local elected officials are often full-time, gainfully employed persons working 50–60 hours per week before they serve their government role. They need a professional staff that knows the government structure and understands businesses needs that can assist in the development and implementation of important projects. Community leaders from small towns need professional help to understand and respond to the increasing amount of Federal regulation and requirements. Also, community leaders need a person(s) that they can trust and a person that understands the rural leaders problems and how to tackle the problem. Further, the leader(s) needs a professional person(s) that is readily available in cases of emergencies as the project is developed and implemented. In South Dakota and in other States we have professional staff members in the development district offices that meet the community requirements.

- So for rural development action fund these needed professional staff member's activities in a manner similar to the section 111 of the Rural Development Act.

In closing I want to thank you, Mr. Chairman, for inviting me to appear at this hearing. I have touched on only a few items of concern to rural America. At another time, I would be happy to discuss other rural development issues. In the meantime, I look forward working with you as you develop and strengthen programs for rural economic development. I will be happy to answer questions.

[Chart prepared by the National Association of Development Organizations follows:]

FEDERAL BUDGET COMPARISON, FY 1980–1988, RURAL AND RELATED DOMESTIC PROGRAMS

[In millions of dollars]

	1980	1981	1982	1983	1984	1985	1986	1987	1988	Proposed 1989
Department of Agriculture:										
FmHA:										
Water and Waste Disposal Grants	$290.0	$200.0	$125.0	$300.0	$90.0	$115.0	$109.4	$109.4	$109.4	$75.0
Water and Waste Disposal Loans	[1] 700.0	[1] 750.0	[1] 375.0	[1] 600.0	[1] 270.0	[1] 340.0	[1] 325.4	[1] 330.3	[1] 330.3	[1] 250.0
Community Facility Loans	[1] 240.0	[1] 260.0	[1] 126.2	[1] 130.0	[1] 130.0	[1] 115.0	[1] 95.7	[1] 95.7	[1] 95.7	[1] 50.0
Business and Industry Grants	10.0	5.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Business and Industry Loans	[1] 1,073.8	[1] 741.0	[1] 300.0	[1] 300.0	[1] 300.0	[1] 61.4	[1] 95.7	[1] 95.7	[1] 95.7	[1] 95.7
Fire Protection Grants	3.5	3.5	3.3	3.3	3.3	3.3	3.1	3.1	3.1	0.0
Planning Grants (section 111)	6.0	5.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Rental Housing Loans	[1] 881.3	[1] 842.5	[1] 953.7	[1] 802.0	[1] 940.0	[1] 903.3	[1] 669.9	[1] 669.9	[1] 554.9	0.0
Resource Cons. and Develop. (RC&D) Loans	[1] 1.8	[1] 2.0	[1] 0.9	[1] 1.2	[1] 4.0	[1] 0.5	[1] 1.9	[1] 1.2	[1] 1.2	0.0
SCS: RC&D Projects	32.0	34.0	26.5	30.7	26.0	26.3	25.0	25.0	25.1	25.0
Appalachian Regional Commission:										
Total Nonhighway Programs	126.6	119.9	62.1	83.0	49.1	59.3	32.7	29.4	37.6	0.0
Research, T.A., Other	2.6	1.9	2.8	2.0	2.5	4.0	1.0	1.0	2.6	0.0
Local Development Districts	5.7	6.0	4.5	4.0	4.0	3.5	2.0	2.0	3.2	0.0
Jobs and Private Investment	NA.	NA.	NA.	54.0	27.3	28.4	12.2	20.5	25.8	0.0
Distressed Counties Program	NA.	NA.	NA.	15.0	17.6	17.8	3.2	5.9	6.0	0.0
Health Finish-up Program	NA.	NA.	NA.	8.2	4.1	3.5	0.0	0.0	0.0	0.0
Department of Commerce:										
EDA:										
Planning Grants	33.6	23.9	24.7	27.0	27.0	26.8	25.8	24.0	23.0	0.0
Public Works	260.7	257.9	129.9	229.9	170.0	156.0	107.2	122.4	126.5	0.0
Economic Adjustment Grants	85.9	12.6	33.0	33.0	33.0	33.0	24.9	24.0	24.7	0.0
Technical Assistance	30.7	26.4	7.9	7.5	8.0	8.2	7.7	7.0	6.7	0.0
Research and Evaluation	4.2	2.7	1.6	2.0	2.0	2.0	1.9	1.0	1.2	0.0
Direct Loans	116.4	54.1	0.0	17.0	18.1	0.0	0.0	0.0	0.0	0.0
Total Program Funds	531.5	377.6	197.1	316.4	258.1	226.0	166.6	180.4	182.0	0.0
Loan Guarantees	[1] 425.0	[1] 425.0	[1] 150.0	[1] 20.0	[1] 150.0	[1] 150.0	[1] 150.0	[1] 150.0	[1] 150.0	0.0

FEDERAL BUDGET COMPARISON, FY 1980–1988, RURAL AND RELATED DOMESTIC PROGRAMS—Continued

[In millions of dollars]

	1980	1981	1982	1983	1984	1985	1986	1987	1988	Proposed 1989
Salaries and Expenses	40.8	39.7	25.0	27.6	27.9	28.4	24.9	25.0	24.7	0.0
Regional Development (title V)	109.4	47.7	0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Environmental Protection Agency: Construction Grants	4,900.0	5,100.0	3,400.0	2,430.0	2,435.0	2,400.0	1,774.2	2,361.0	2,304.0	1,500.0
Department of Health and Human Services:										
Community Service Block Grant (80–81 CSA)	550.5	542.3	340.3	375.1	348.0	368.1	320.6	335.0	382.3	310.0
National Health Service Corporation	77.5	92.3	88.4	88.3	65.3	59.7	58.5	47.0	51.8	35.0
Rural Development Loan Fund	20.0	7.7	0.0	0.0	10.0	0.0	0.0	0.0	0.0	0.0
Department of Housing and Urban Development:										
Comm. Dev. Blk. Grant—CDBG (30 percent rural)	3,862.0	3,694.6	3,456.0	4,456.0	3,468.0	3,468.0	2,990.0	3,000.0	2,880.0	2,480.0
Urban Dev. Act. Grant—UDAG (25 percent rural)	675.0	675.0	473.7	440.0	440.0	440.0	315.8	225.0	216.0	0.0
Rehabilitation Loans (312)	214.2	132.3	49.9	44.9	132.1	0.0	72.0	200.0	0.0	150.0
Department of Interior:										
State Outdoor Rec. (LWCF) Grants	318.6	293.5	46.4	112.2	115.2	102.4	46.0	32.7	16.6	0.0
State Historic Preservation Grants	43.8	51.7	23.3	46.9	22.0	21.1	19.5	....	23.7	0.0
Payment in Lieu of Taxes (BLM)	108.0	108.0	91.3	96.1	105.0	102.9	99.9	105.0	105.0	105.0
Department of Labor:										
JTPA State Block Grant (1980 CETA)	3,342.0	NA.	NA.	2,179.3	3,300.8	1,886.2	1,783.1	1,840.0	1,809.5	1,809.5
Summer Youth (1980 CETA)	2,330.5	NA.	NA.	824.2	824.5	824.5	635.9	750.0	718.2	718.2
Dislocated Worker (80 Trade Adj. Asst.)	1,664.4	NA.	NA.	110.0	262.7	235.3	95.7	200.0	287.2	[2] 0.0
Comm. Service Employment for Older Americans	266.9	277.1	282.0	319.5	317.3	326.0	311.9	336.0	331.3	336.0
Small Business Administration:										
503 (504) Cert. Development Co. Loans	[1] 250.0	[1] 100.0	[1] 150.0	[1] 250.0	[1] 350.0	[1] 450.0	[1] 383.0	[1] 373.0	[1] 450.0	[1] 450.0
Small Bus. Investment Co. Loans	148.8	160.0	134.1	159.9	250.0	256.0	239.0	233.0	233.0	186.0
Minority Ent. SBIC Loan—Direct	32.5	41.2	27.3	25.7	41.0	41.0	39.0	39.0	36.0	0.0

FEDERAL BUDGET COMPARISON, FY 1980-1988, RURAL AND RELATED DOMESTIC PROGRAMS—Continued

[In millions of dollars]

	1980	1981	1982	1983	1984	1985	1986	1987	1988	Proposed 1989
General Business Loans (Guaranteed)	[1] 3,000.0	[1] 2,804.7	[1] 1,516.5	[1] 2,094.4	[1] 2,600.0	[1] 2,660.0	[1] 2,491.0	[1] 2,473.0	[1] 2,421.0	[1] 2,392.0
General Business Loans—Direct	218.7	205.1	114.8	85.5	108.3	108.0	0.0	0.0	0.0	0.0
Handicapped Loans (Guaranteed)	[1] 0.3	[1] 1.7	[1] 0.8	[1] 1.6	[1] 5.0	[1] 5.0	[1] 5.0	[1] 5.0	[1] 5.0	0.0
Handicapped Loans—Direct	19.9	25.0	13.1	14.9	20.0	24.0	14.0	15.0	13.0	0.0
Economic Opportunity Loans (Guaranteed)	[1] 24.5	[1] 20.4	[1] 13.4	[1] 30.5	[1] 60.0	[1] 60.0	[1] 57.0	[1] 56.0	[1] 40.0	0.0
Economic Opportunity Loans—Direct	63.2	49.0	21.8	16.5	45.0	45.0	24.0	24.0	19.0	....
Energy Loans (Guaranteed)	[1] 11.3	[1] 7.3	[1] 1.3	[1] 3.2	[1] 15.0	[1] 15.0	[1] 14.0	[1] 14.0	[1] 5.0	0.0
Energy Loans—Direct	14.4	6.7	1.2	0.4	3.0	0.0	0.0	0.0	0.0	0.0
Veterans Loans—Direct	0.0	0.0	0.0	6.4	25.0	25.0	19.0	19.0	17.0	0.0
Management Assistance	22.1	19.5	29.4	33.1	39.5	39.1	19.2	19.3	18.0	17.3
Sec. 501 Program	0.0	0.0	0.0	0.0	2.0	5.0	0.0	0.0	0.0	0.0
SBDC Program	3.9	8.1	11.6	15.4	28.5	28.5	33.5	35.0	40.0	18.2
Sec. 502 Dev. Company Loans—Direct	44.7	6.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Tennessee Valley Authority:										
Economic and Comm. Resources	12.4	11.2	16.8	18.1	20.8	22.5	14.0	11.7	14.0	0.0
Department of Transportation:										
Local Rail Service Assistance	82.6	47.4	28.0	22.0	25.2	23.2	19.3	25.3	16.5	0.0
Sec. 18 Mass Transit Grants—100 percent rural	57.1	73.2	74.3	77.2	79.2	81.5	63.0	75.0	64.6	[2] 67.0
Aircraft Purchase Loans	[1] 650.0	[1] 429.0	[1] 201.5	[1] 102.5	[1] 8.7	0.0	0.0	0.0	0.0	0.0
Appalachian Highway Systems	228.7	218.2	107.6	116.1	110.8	104.3	61.7	71.8	67.0	0.0
Secondary (Rural) Highway System	772.9	443.1	387.0	602.3	500.0	500.0	650.0	385.0	475.0	400.0
Payments Air Carriers (Local Air Serv.)	95.8	114.5	86.1	52.1	46.3	46.3	28.0	0.0	28.5	0.0
Department of Treasury:										
General Revenue Sharing	6,854.9	4,569.9	4,566.7	4,566.7	4,566.7	4,566.7	4,100.0	0.0	0.0	0.0

[1] Loan Guarantee Authority.
[2] Estimate/legislation to be submitted.

PREPARED STATEMENT OF DON MEISNER, EXECUTIVE DIRECTOR, SIOUXLAND INTERSTATE METROPOLITAN PLANNING COUNCIL, SIOUX CITY, IA

BACKGROUND

The three State and the Siouxland area have experienced population loss through outmigration since about 1930 (attachment 1).

This has been a forced migration due to the lack of opportunity here for many. Insufficient investment resulting in job creation has forced the natural population increase (births over deaths) and those displaced from the farm to seek opportunity elsewhere.

During the last decade, and until recently, we have witnessed declining rural economies, continued outmigration, declining tax bases, increased Federal and State mandates, and declines in real per capita income. We have also seen a retreat by the Federal Government of a national/local partnership through the loss of general revenue sharing and a huge reduction in categorical program expenditures. Lastly, we see vast disparities in Federal program expenditure patterns and huge increases in the national debt.

NEEDS

Local governments in rural America need a partnership to reverse those trends. We need to induce investment, create jobs, maintain our infrastructure, protect our agricultural capacity, and provide a suitable environment for the families of rural America.

Our needs include:

1. Leadership development and institutional capacity building;
2. Financing for essential public purposes;
3. Financing for business and agricultural development; and
4. Financing for housing rehabilitation and development.

In most cases, the Farmers Home Administration, the U.S. Department of Housing and Urban Development, Economic Development Administration, U.S. Small Business Administration, and other agencies have or have had the tools to assist with these needs. Lacking is the funding, consistency of program availability, and flexibility of program use.

1. Leadership development and capacity building.

We need technical assistance to train ourselves, rural residents, and potential leaders. This training will include history, value identification, alternative futures (visioning), mission development, planning, and plan implementation. Included plan elements are traditional services, health care, education, and cultural services.

We see communities in several counties working in a commonwealth approach and sharing services. Technical assistance should be supporting these movements.

The Farmers Home Administration no longer has a funded technical assistance capacity building program.

2. Financing essential public improvements.

We need to find programs to allow communities to fund improvements that are basic community needs, and mandates of Federal and State law. An increased investment in rural communities is critical as correctly delineated in several recent national infrastructure studies.

The Farmers Home Administration programs that are used for these purposes have been reduced greatly since 1980 (attachment 2). If properly funded, these programs have and can have a positive impact on rural development.

3. Financing for business development.

The current programs of the Farmers Home Administration, other Federal agencies and State agencies are working quite well. We do believe that they should change the program to:

(a) Reduce review time,

(b) Allow the capitalization of revolving loan funds exclusively for rural business development, and

(c) Permit rehabilitation of mixed use structures on Main Street. (Commercial on street floor and residential on upper floors.)

4. Financing for housing rehabilitation and housing development.

The current programs of the Farmers Home Administration and U.S. Department of Housing and Urban Development work well. We have found these agencies to be staffed with capable and motivated professionals. We do, however, need to expand the programs to:

(a) Expand the amount of rental assistance available (sec. 515G FmHA), and

(b) Expand the housing rehabilitation funds available (secs. 504 and 533 of FmHA and section 312 and Mod Rehab of HUD).

We need programs that we can utilize with certainty over time. Currently we must compete for housing rehabilitation funds. It is very difficult to adequately staff for a housing rehabilitation program one year and then not have a program the next. We would be much more efficient with a long term agreement with FmHA. We believe that, if properly capitalized (on a demonstration basis), we can demonstrate program efficiency through a revolving account.

Improvements in the financing of infrastructure, business development, housing and technical assistance are vital. Most important is a funded program for technical assistance so that we can demonstrate program efficiencies that can help accomplish lasting rural development.

The financing improvements for infrastructure, business development, and housing development will likely require phasing.

First Phase. Adequately fund loan and grant programs. Many needed improvements such as sewer, water, and waste disposal are not financially feasible with market rate loans.

Second Phase. Rural Recovery Bank. This proposed federally mandated option could:

1. Establish and capitalize a regionally administered revolving loan fund to provide low cost capital for infrastructure, community facilities, business development, and housing development.
2. Promote local and regional investment in the Regional Revolving Fund through a program of certificates of participation guaranteed by the Rural Recovery Bank and/or the Regional Revolving Fund.

The advantages of local persons investing in their region are many.

We will be happy to work with this committee, other congressional committees, the Farmers Home Administration, and other agencies to establish and demonstrate the value and efficiency of these improvements.

[Attachment 1, tables entitled: 1930–1980 Population Change—States and Regions; Population Change 1980–1986; SIMPCO Member Cities—Population Trends, 1960–1985; and SIMPCO Area Counties and attachment 2, Federal Budget Comparison, FY 1980–1988, Rural and Related Domestic Programs follow:]

[Attachment 1]

1930–1980 POPULATION CHANGE—STATES AND REGIONS

[000]

	1930	1980	1930–1980 change	1930–1980 percent change
Northeast	34,426	49,137	14,711	43
New England	8,166	12,349	4,183	51
Maine	797	1,125	328	41
New Hampshire	465	921	456	98
Vermont	360	511	151	42
Massachusetts	4,250	5,737	1,487	35
Rhode Island	687	947	260	38
Connecticut	1,607	3,108	1,501	93
Mid-Atlantic	26,260	36,788	10,528	40
New York	12,588	17,557	4,969	40
New Jersey	4,041	7,364	3,323	82
Pennsylvania	9,631	11,867	2,236	23
Midwest	38,595	58,854	20,259	53
Great Lakes	25,298	41,670	16,372	65
Ohio	6,647	10,798	4,151	62
Indiana	3,239	5,490	2,251	70
Illinois	7,631	11,419	3,788	50
Michigan	4,842	9,258	4,416	91
Wisconsin	2,939	4,706	1,767	60
Great Plains	13,297	17,184	3,887	29
Minnesota	2,564	4,077	1,513	59

1930–1980 POPULATION CHANGE—STATES AND REGIONS—Continued

[000]

	1930	1980	1930–1980 change	1930–1980 percent change
Iowa	2,471	2,913	442	18
Missouri	3,629	4,918	1,289	36
Kansas	1,881	2,363	482	26
South Dakota	693	690	−3	−0.4
North Dakota	681	653	−28	−4
Nebraska	1,378	1,570	192	14
South	37,372	74,711	37,339	100
South Atlantic	15,307	36,305	20,998	137
Delaware	238	595	357	150
Maryland 1,632	4,217	2,585	158	
Virginia	2,422	5,346	2,924	121
West Virginia	1,729	1,950	221	13
North Carolina	3,170	5,873	2,704	85
South Carolina	1,739	3,119	1,380	79
Georgia	2,909	5,464	2,555	88
Florida	1,468	9,740	8,272	564
South Central	22,065	38,406	16,341	74
Kentucky	2,615	3,661	1,046	40
Tennessee	2,617	4,591	1,974	75
Alabama	2,646	3,890	1,244	47
Mississippi	2,010	2,521	511	25
Louisiana	2,102	4,204	2,102	100
Arkansas	1,854	2,286	432	23
Oklahoma	2,396	3,025	629	26
Texas	5,825	14,228	8,403	144
West	12,324	43,165	30,841	250
Mountain	3,703	11,368	7,665	207
Montana	538	786	248	46
Idaho	445	944	499	112
Wyoming	226	471	245	108
Colorado	1,036	2,889	1,853	179
Utah	508	1,461	953	188
Nevada	91	799	708	778
Arizona	436	2,718	2,282	524
New Mexico	423	1,300	877	207
Pacific	8,621	31,797	23,176	269
California	5,677	23,669	17,992	317
Oregon	954	2,633	1,679	176
Washington	1,563	4,130	2,567	164
Alaska	59	400	341	578
Hawaii	368	965	597	162
District of Columbia	487	638	151	31
U.S. total	123,204	226,505	103,301	84

Source: U.S. Bureau of Census.

Note: Numbers are rounded off.

POPULATION CHANGE 1980–1986

State/region	1980 population	1986 population	Number change	Percent change
Northeast:				
New England:				
Maine	1,125,043	1,173,745	48,702	4.3
New Hampshire	920,610	1,026,920	106,310	11.5
Vermont	511,456	540,899	29,443	5.8
Massachusetts	5,737,093	5,831,821	94,728	1.7
Rhode Island	947,154	974,900	27,746	2.9
Connecticut	3,107,564	3,188,813	81,249	2.6
Mid-Atlantic:				
New York	17,558,165	17,772,278	214,113	1.2
New Jersey	7,365,011	7,619,678	254,667	3.5
Pennsylvania	11,864,720	11,889,058	24,338	0.2
Midwest:				
Great Lakes:				
Ohio	10,797,603	10,752,211	(45,392)	(0.4)
Indiana	5,490,212	5,503,512	13,300	0.2
Illinois	11,427,409	11,550,119	122,710	1.1
Michigan	9,262,044	9,155,190	(106,854)	(1.2)
Wisconsin	4,705,642	4,784,627	78,985	1.7
Great Plains:				
Minnesota	4,075,970	4,214,013	138,043	3.4
Iowa	2,913,808	2,850,752	(63,056)	(2.2)
Missouri	4,916,762	5,066,206	149,444	3.0
Kansas	2,364,236	2,460,794	96,558	4.1
Nebraska	1,569,825	1,597,736	27,911	1.8
South Dakota	690,768	707,997	17,229	2.5
North Dakota	652,717	679,172	26,455	4.1
South:				
South Atlantic:				
Delaware	594,338	632,754	38,416	6.5
Maryland	4,216,933	4,463,343	246,410	5.8
Virginia	5,346,797	5,787,115	440,318	8.2
West Virginia	1,950,186	1,918,995	(31,191)	(1.6)
South Carolina	3,120,730	3,375,615	254,885	8.2
North Carolina	5,880,416	6,331,289	450,873	7.7
Georgia	5,462,982	6,103,923	640,941	11.7
Florida	9,746,961	11,675,143	1,928,182	19.8
South Central:				
Kentucky	3,660,324	3,728,130	67,806	1.9
Tennessee	4,591,023	4,802,823	211,800	4.6
Alabama	3,894,025	4,052,636	158,611	4.1
Mississippi	2,520,770	2,624,952	104,182	4.1
Louisiana	4,206,116	4,501,474	295,358	7.0
Arkansas	2,286,357	2,371,081	84,724	3.7
Oklahoma	3,025,487	3,305,298	279,811	9.2
Texas	14,225,513	16,681,679	2,456,166	17.3
West:				
Mountain:				
Montana	786,690	818,959	32,269	4.1
Idaho	944,127	1,002,568	58,441	6.2
Wyoming	469,557	507,341	37,784	8.0
Colorado	2,889,735	3,266,889	377,154	13.1
Utah	1,461,037	1,665,437	204,400	14.0
Nevada	800,508	963,285	162,777	20.3
Arizona	2,716,546	3,242,188	525,642	19.3
New Mexico	1,303,302	1,479,486	176,184	13.5
Pacific:				
California	23,667,765	26,981,280	3,313,515	14.0

POPULATION CHANGE 1980–1986—Continued

State/region	1980 population	1986 population	Number change	Percent change
Oregon	2,633,156	2,697,787	64,631	2.5
Washington	4,132,353	4,462,685	330,332	8.0
Hawaii	964,691	1,062,344	97,653	10.1
Alaska	401,851	533,570	131,719	32.8
District of Columbia	638,432	626,065	(12,367)	(1.9)
U.S. total	226,542,520	244,573,875	18,031,355	8.0

Source: U.S. Bureau of the Census, "Statistical Abstract of the United States, 1987."

SIMPCO MEMBER CITIES—POPULATION TRENDS 1960–1985

City	1960	1970	1980	Percent change 1970–80	Percent change 1970–80	Estimate 1984	Percent change 1980–84
Akron	1,351	1,324	1,517	12.3	14.6	1,448	−4.5
Allen	350	309	390	11.4	26.2		
Blencoe	286	255	247	−13.6	−3.1	270	9.3
Bronson		193	289		49.7	339	17.3
Cherokee	7,724	7,272	7,004	−9.3	−3.7	6,486	−7.4
Coleridge	604	608	673	11.4	10.7		
Correctionville	912	870	935	2.5	7.5	909	−2.8
Craig	117	88	105	−10.3	19.3	106	1.0
Cushing	261	204	270	3.4	32.3	261	−3.3
Dakota City	928	1,057	1,440	55.1	36.2		
Danbury	510	527	492	−3.5	−6.6	439	−10.8
Elk Point	1,378	1,372	1,661	20.5	21.1		
Homer	370	457	564	52.4	23.4		
Hornick	275	250	239	−13.1	−4.4	236	−1.3
Jackson	224	232	287	28.1	23.7		
Jefferson	443	474	592	33.6	24.9		
Kingsley	1,044	1,097	1,209	15.8	10.2		
Le Mars	6,767	8,159	8,276	22.3	1.4	8,130	−1.8
Mapleton	1,686	1,647	1,495	−11.3	−9.2	1,484	−.7
Marcus	1,307	1,272	1,206	−7.7	−5.2	1,205	−.1
Maskell	54	43	76	40.7	76.7		
Moorhead	313	271	264	−15.6	−2.6	232	−12.1
Moville	1,156	1,198	1,273	10.1	6.3	1,293	1.6
North Sioux City	736	860	1,992	170.6	131.6		
Onawa	3,176	3,154	3,283	3.4	4.1	3,108	−5.3
Oto	221	203	172	−22.2	−15.3	170	−1.2
Pierson	425	421	408	−4.0	−3.1	398	−2.5
Ponca	924	984	1,057	14.4	7.4		
Remsen	1,338	1,367	1,592	19.0	16.4	1,527	−4.1
Rodney	94	66	82	−12.8	24.2	84	2.4
Sergeant Bluff	813	1,153	2,416	197.2	109.5	2,508	3.8
Sioux City	89,159	85,925	82,003	−8.0	−4.6	81,767	−.3
Sloan	704	799	978	38.9	22.4	1,021	4.4
Smithland	349	293	282	−19.2	−3.7	287	1.8
Soldier	284	242	257	−9.5	6.2	234	−8.9
South Sioux City	7,200	7,920	9,339	29.7	17.9		
Turin	163	115	103	−36.8	−10.4	115	11.7
Ute	511	512	479	−6.3	−6.4	454	−5.2
Westfield	187	148	199	6.4	3.4	212	6.5
Whiting	595	590	734	23.4	24.4	685	−6.7

SIMPCO AREA COUNTIES

County	1960	1970	1980	Percent change 1960–80	Percent change 1970–80	Estimate 1984	Percent change 1980–84
Cherokee	18,598	17,269	16,238	−12.7	−6.0	15,800	−2.7
Dakota	12,168	13,137	16,573	36.2	26.1		
Ida	10,269	9,283	8,908	−13.2	−4.0	8,900	−.1
Monona	13,916	12,069	11,692	−16.0	−3.1	11,400	−2.5
Plymouth	23,906	24,312	24,743	3.5	1.8	24,500	−1.0
Union	10,197	9,643	10,938	7.3	13.4		
Woodbury	107,849	103,052	100,884	−6.5	−2.1	101,000	.1

[Attachment 2—NADO News—Special Report, January 1988]

FEDERAL BUDGET COMPARISON, FY 1980–1988, RURAL AND RELATED DOMESTIC PROGRAMS

[In millions of dollars]

	1980	1981	1982	1983	1984	1985	1986	1987	1988
Department of Agriculture:									
FmHA:									
Water and Waste Disposal Grants	$290.0	$200.0	$125.0	$300.0	$90.0	$115.0	$109.4	$109.4	$109.4
Water and Waste Disposal Loans	[1] 700.0	[1] 750.0	[1] 375.0	[1] 600.0	[1] 270.0	[1] 340.0	[1] 325.4	[1] 330.3	[1] 330.3
Community Facility Loans	[1] 240.0	[1] 260.0	[1] 126.2	[1] 130.0	[1] 130.0	[1] 115.0	[1] 95.7	[1] 95.7	[1] 95.7
Business and Industry Grants	10.0	5.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Business and Industry Loans	[1] 1,073.8	[1] 741.0	[1] 300.0	[1] 300.0	[1] 300.0	[1] 61.4	[1] 95.7	[1] 95.7	[1] 95.7
Fire Protection Grants	3.5	3.5	3.3	3.3	3.3	3.3	3.1	3.1	3.1
Planning Grants (section 111)	6.0	5.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Rental Housing Loans	[1] 881.3	[1] 842.5	[1] 953.7	[1] 802.0	[1] 940.0	[1] 903.3	[1] 669.9	[1] 669.9	[1] 554.9
Resource Cons. and Develop. (RC&D) Loans	[1] 1.8	[1] 2.0	[1] 0.9	[1] 1.2	[1] 4.0	[1] 0.5	[1] 1.9	[1] 1.2	[1] 1.2
SCS: RC&D Projects	32.0	34.0	26.5	30.7	26.0	26.3	25.0	25.0	25.1
Appalachian Regional Commission:									
Total Nonhighway Programs	126.6	119.9	62.1	83.0	49.1	59.3	32.7	29.4	37.6
Research, T.A., Other	2.6	1.9	2.8	2.0	2.5	4.0	1.0	1.0	2.6
Local Development Districts	5.7	6.0	4.5	4.0	4.0	3.5	2.0	2.0	3.2
Jobs and Private Investment	NA.	NA.	NA.	54.0	27.3	28.4	12.2	20.5	25.8
Distressed Counties Program	NA.	NA.	NA.	15.0	17.6	17.8	3.2	5.9	6.0
Health Finish-up Program	NA.	NA.	NA.	8.2	4.1	3.5	0.0	0.0	0.0
Department of Commerce:									
EDA:									
Planning Grants	33.6	23.9	24.7	27.0	27.0	26.8	25.8	24.0	230.0
Public Works	260.7	257.9	129.9	229.9	170.0	156.0	107.2	122.4	126.5
Economic Adjustment Grants	85.9	12.6	33.0	33.0	33.0	33.0	24.9	24.0	24.7
Technical Assistance	30.7	26.4	7.9	7.5	8.0	8.2	7.7	7.0	6.7
Research and Evaluation	4.2	2.7	1.6	2.0	2.0	2.0	1.9	1.0	1.2
Direct Loans	116.4	54.1	0.0	17.0	18.1	0.0	0.0	0.0	0.0
Total Program Funds	531.5	377.6	197.1	316.4	258.1	226.0	166.6	180.4	182.0
Loan Guarantees	[1] 425.0	[1] 425.0	[1] 150.0	[1] 20.0	[1] 150.0	[1] 150.0	[1] 150.0	[1] 150.0	[1] 150.0
Salaries and Expenses	40.8	39.7	25.0	27.6	27.9	28.4	24.9	25.0	24.7

FEDERAL BUDGET COMPARISON, FY 1980–1988, RURAL AND RELATED DOMESTIC PROGRAMS—Continued

[In millions of dollars]

	1980	1981	1982	1983	1984	1985	1986	1987	1988
Regional Development (title V)	109.4	47.7	0.7	0.0	0.0	0.0	0.0	0.0	0.0
Environmental Protection Agency: Construction Grants	4,900.0	5,100.0	3,400.0	2,430.0	2,435.0	2,400.0	1,774.2	2,361.0	2,304.0
Department of Health and Human Services:									
Community Service Block Grant (80–81 CSA)	550.5	542.3	340.3	375.1	348.0	368.1	320.6	335.0	382.3
National Health Service Corporation	77.5	92.3	88.4	88.3	65.3	59.7	58.5	47.0	52.7
Rural Development Loan Fund	26.0	7.7	0.0	0.0	10.0	0.0	0.0	0.0	0.0
Department of Housing and Urban Development:									
Comm. Dev. Block Grant (CDBG) (30 percent rural)	3,862.0	3,694.6	3,456.0	4,456.0	3,468.0	3,468.0	2,990.0	3,000.0	2,880.0
Urban Dev. Action Grant (UDAG) (25 percent rural)	675.0	675.0	473.7	440.0	440.0	440.0	315.8	225.0	216.0
Rehabilitation Loans (312)	214.2	132.3	49.9	44.9	132.1	0.0	72.0	200.0	0.0
Department of Interior:									
State Outdoor Rec. (LWCF) Grants	318.6	293.5	46.4	112.2	115.2	102.4	46.0	32.7	16.6
State Historic Preservation Grants	43.8	51.7	23.3	46.9	22.0	21.1	19.5		23.7
Payment in Lieu of Taxes (BLM)	108.0	108.0	91.3	96.1	105.0	102.9	99.9	105.0	105.0
Department of Labor:									
JTPA State Block Grant (1980 CETA)	3,342.0	NA	NA	2,179.3	3,300.8	1,886.2	1,783.1	1,840.0	1,809.5
Summer Youth (1980 CETA)	2,330.5	NA	NA	824.2	824.5	824.5	635.9	750.0	718.2
Dislocated Worker (1980 Trade Adj. Asst.)	1,664.4	NA	NA	110.0	262.7	235.3	95.7	200.0	287.2
Comm. Service Employment for Older Americans	266.9	277.1	282.0	319.5	317.3	326.0	311.9	326.0	331.2
Small Business Administration:									
503 (504) Cert. Development Co. Loans	[1] 250.0	[1] 100.0	[1] 150.0	[1] 250.0	[1] 350.0	[1] 450.0	[1] 383.0	[1] 373.0	[1] 450.0
Small Bus. Investment Co. Loans	148.8	160.0	134.1	159.9	250.0	256.0	239.0	233.0	250.0
Minority Ent. SBIC Loan (Direct)	32.5	41.2	27.3	25.7	41.0	41.0	39.0	39.0	36.0
General Business Loans (Guaranteed)	[1] 3,000.0	[1] 2,804.7	[1] 1,516.5	[1] 2,094.4	[1] 2,600.0	[1] 2,660.0	[1] 2,491.0	[1] 2,473.0	[1] 2,421.0
General Business Loans (Direct)	218.7	205.1	114.8	85.5	108.3	108.0	0.0	0.0	0.0
Handicapped Loans (Guaranteed)	[1] 0.3	[1] 1.7	[1] 0.8	[1] 1.6	[1] 5.0	[1] 5.0	[1] 5.0	[1] 5.0	[1] 5.0
Handicapped Loans (Direct)	19.9	25.0	13.1	14.9	20.0	24.0	14.0	15.0	13.0
Economic Opportunity Loans (Guaranteed)	[1] 24.5	[1] 20.4	[1] 13.4	[1] 30.5	[1] 60.0	[1] 60.0	[1] 57.0	[1] 56.0	[1] 40.0
Economic Opportunity Loans (Direct)	63.2	49.0	21.8	16.5	45.0	45.0	24.0	24.0	19.0
Energy Loans (Guaranteed)	[1] 11.3	[1] 7.3	[1] 1.3	[1] 3.2	[1] 15.0	[1] 15.0	[1] 14.0	[1] 14.0	[1] 5.0
Energy Loans (Direct)	14.4	6.7	1.2	0.4	3.0	0.0	0.0	0.0	0.0
Veterans Loans (Direct)	0.0	0.0	0.0	6.4	25.0	25.0	19.0	19.0	17.0
Management Assistance	22.1	19.5	29.4	33.1	39.5	39.1	19.2	19.3	[2] 18.0
Sec. 501 Program	0.0	0.0	0.0	0.0	2.0	5.0	0.0	0.0	0.0
SBDC Program	3.9	8.1	11.6	15.4	28.5	28.5	33.5	35.0	40.0
Sec. 502 Dev. Company Loans (Direct)	44.7	6.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FEDERAL BUDGET COMPARISON, FY 1980–1988, RURAL AND RELATED DOMESTIC PROGRAMS—Continued

[In millions of dollars]

	1980	1981	1982	1983	1984	1985	1986	1987	1988
Tennessee Valley Authority: Economic and Comm. Resources	12.4	11.2	16.8	18.1	20.8	22.5	14.0	11.7	0.0
Department of Transportation:									
Local Rail Service Assistance	82.6	47.4	28.0	22.0	25.2	23.2	19.3	10.0	9.6
Sec. 18 Mass Transit Grants (100 percent rural)	57.1	73.2	74.3	77.2	79.2	81.5	63.0	75.0	64.6
Aircraft Purchase Loans	[1] 650.0	[1] 429.0	[1] 201.5	[1] 102.5	[1] 8.7	0.0	0.0	0.0	0.0
Appalachian Highway Systems	228.7	218.2	107.6	116.1	110.8	104.3	61.7	71.8	67.0
Secondary (Rural) Highway System	772.9	443.1	387.0	602.3	500.0	500.0	650.0	385.0	[2] 600.0
Payments to Air Carriers (Local Air Serv.)	95.8	114.5	86.1	52.1	46.3	46.3	28.0	0.0	28.5
Department of Treasury: General Revenue Sharing	6,854.9	4,569.9	4,566.7	4,566.7	4,566.7	4,566.7	4,100.0	0.0	0.0

[1] Loan Guarantee Authority (e.g., EDA Loan Guarantees).

[2] Indicates estimate.

PREPARED STATEMENT OF JOHN LONG, HOG PRODUCER, LAUREL, NE

It appears to me that farm credit cannot be isolated from all credit sources. It is my view the financial institutions currently have an excess supply problem that we hog producers experience nearly every fourth year. There are simply too many credit sources for all of them to operate at a profit.

Failure has become a common term in the world of finance. Client failure is normally the reason for a financial failure. Client failure many times is a result of too much supply and too little demand.

Creditworthy farmers have several available credit sources. The uncreditworthy have FmHA to publicly finance their habits. In my opinion the public needs to get out of the finance business. Specifically, FmHA, PCA, and the FLB have outlived their usefulness and have become a burden, not only to the private sector, but also to society as a whole. I make these comments having done business with the Yankton PCA through 1985. Richard Hinkley and Don Kettering were fine people to work with and ran a sound PCA. The reason I was forced to leave was the failure of the PCA-FLB system, the freezing of stock and the potential raiding the reserves of sound PCA's to shore up there failing sisters. My father financed his first farm with FmHA and had a successful and congenial experience with them. This background should indicate a positive working relationship with two public finance institutions.

With the advent of Farmer Mac, it appears the FLB and its potential drain of public funds can be eliminated. I feel the same way about FmHA.

The 1987 farm income was $29 billion of which $16 billion was direct Government payments. To the best of my knowledge this $16 billion of payments does not include the 1987 share of the $5 billion FLB-PCA bailout or the $39 billion FmHA writeoffs that have since taken place. It is difficult for me to determine if agriculture is becoming a welfare program or a public utility. As an individual and as a hog producer, I want to compete in a free and open market with the potential of a profit and the risk of a loss. I also want to compete on a level field.

Enclosed is a copy of an Omaha World Herald article (attachment A) about the first person in the USA to buy cropland under a new Federal program designed to speed the return of foreclosed property to family farms. My analysis is this new experiment in socialism will cost the public 4 percent of $140 thousand or $5,600 annually and Maquoketa State Bank will subsidize this loan at the rate of 1,400 the first year. This is a $7,000 per quarter of land subsidy. Assuming four quarters of land are required to be a viable operation, one could show it only takes $28 thousand per year subsidy for the land only.

A second enclosure (attachment B) is a copy of a FmHA sale notice. I had read this notice twice prior to February 9, 1989. The condition, "No offers more or less that [than] this price will be accepted" struck me as being a printing error. On February 9, 1989, I called the FmHA to find out—it indeed was not an error, but rather a directive from Congress.

To qualify for credit one must be turned down by two conventional long-term credit sources. The terms of credit are zero downpayment, 9¾ interest and a 40-year loan. These terms are stipulated by Congress. I pose the question: "Would the Office of Currency Control allow this type of loan by a commercial bank where the public's deposits are at risk?"

I was informed by the FmHA office that one property in Cedar County has been sold under this program. FmHA was offered $200 per acre more than the established price and it would have been a cash sale. Senator Kerrey, I heard a cry loud and clear from your recent campaign that the budget deficit needed to be dealt with and dealt with immediately. The above sale to a cash paying citizen could have been a direct cash infusion into the U.S. Treasury, but rather by congressional directive the FmHA must round up some uncreditworthy client to perpetuate and most likely increase the FmHA loan on this property rather than taking the readily available cash.

At the bottom of this FmHA ad the following statement is made, "the property will be sold without regard to race, creed, color, sex, age or national origin." It is my opinion the following should be added: the Government of the people, by the people and for the people will discriminate against financial strength, management ability, and all other virtues generally conducive to a taxpaying capitalist.

FmHA was created as a temporary credit source for farmers. Today, of 263,000 active FmHA loans, 43 percent have been involved 7 years or longer and 22 percent exceed 10 years. FmHA's perfect record of 100 percent delinquency on emergency loans in Georgia is a prime example of bureaucratic empire building. Several former county FmHA board members have expressed grave concern that nearly every loan denied by the board was overruled by a State or national order. Why have a county board?

I feel the presiding accounts clearly demonstrate FmHA has outlived its purpose and should be truncated. Elimination of the FLB—PCA could serve a dual role of decreasing the public debt and by reducing the surplus of unstable and insolvent lending institutions. When the public gets out of ag finance the remaining private institutions should be afforded the opportunity to compete on a level field.

This means the current Treasury plan to raid the FDIC to shore up the FSLIC should be scrapped. If this plan is implemented, the same problem will develop as happened to the Farm Credit System—the weak will drain the stable and the entire system will fail. No financial institution should be denied the opportunity to make a profit—whether it be positive or negative. The FDIC, FSLIC, and NCUA should remain autonomous for the benefit of the finance industry, agriculture, and the Nation.

[Attached article (attachment A), "Iowa Farmer Ready to Begin Foreclosed Property Program," Omaha World Herald, February 6, 1989, and (attachment B), Notice of Sale, follow:]

[Attachment A]

IOWA FARMER READY TO BEGIN FORECLOSED PROPERTY PROGRAM

(Omaha World Herald, February 6, 1989)

Des Moines (AP)—A 24-year-old grain and livestock farmer from eastern Iowa is expected this week to become the first person in the country to buy cropland under a new Federal program designed to speed the return of foreclosed property to family farmers.

Guy Ewoldt, who was turned down last summer for a conventional Farm Credit Service loan, will buy 160 acres of land down the road from his parents' farm with a loan guaranteed by the Farmers Home Administration and at below-market interest rates.

"I wouldn't be able to do it any other way," said Ewoldt, who lives with his parents a mile north of Delmar and who has been farming on rented land since 1983.

The Farmers Home Administration office in Des Moines said the loan will be the first of its kind in the Nation under the new Farm Demonstration Program.

Ewoldt said in an interview that he will have to make a $28,000 downpayment, or 20 percent of the $140,000, 22-year loan. He said he was informed the interest rate will be approximately 6.95 percent, or 5 percentage points lower than a conventional mortgage on the property.

That is because under the program, the FmHA can buy down 4 percentage points of the interest on the loan and give a 5-year guarantee on 95 percent of the loan if the lender knocks another percentage point off the interest rate.

The deal was jointly announced in a statement released by Robert Pim, State FmHA director; John Martin, senior vice president of the Farm Credit Services of Omaha; and Paul Peterson, vice president of the Maquoketa State Bank, which is making the loan.

The Farm Demonstration Program is designed to increase sales of property held by a Farm Credit System bank to family farmers. The FmHA only recently completed its eligibility regulations for the program, which requires a minimum 15 percent downpayment.

Rural advocacy groups in Iowa had been pressing the FmHA and the Farm Credit Services to get the program going.

"We see this as an opportunity to benefit farmers who may not be able to obtain financing for agricultural real estate through more traditional loan programs," Martin said.

Ewoldt said he tried conventional channels first.

Last summer, the Omaha Farm Credit Services office turned him down for a loan, saying his net worth was not high enough to qualify.

"I thought it was real good for being 24," he said of his financial condition. But he said the Farm Credit Services wanted a net worth equal to at least two-thirds of the value of the farm.

Ewoldt said he was concerned about ever meeting such standards, because as he worked to build up his net worth, land values seemed to be growing even faster. Last year, for example, average Iowa land values rose by about 20 percent.

"I was starting to run out of options," he said. "This sure made a difference."

He said the paperwork was no more of a burden than applying for conventional loans, where he had to produce financial records going back several years and cash-flow projections for the farm to be purchased.

He hopes to grow corn and soybeans on the land and perhaps add to his flock of 200 ewes. He also raises hogs.

"I'd like to increase my ewe flock and just farm. That's what I always wanted to do," he said.

[Attachment B]

NOTICE OF SALE

Notice is hereby given that the United States of America, acting through the Farmers Home Administration will sell by regular sale the following described property:

Approximately 320 acres of land located in Cedar County, Nebraska, approximately 6 miles northeast from Randolph, Nebraska.

The property is offered for credit sale only to applicants who are eligible for FmHA loan assistance.

Offers received on or before February 15, 1989, will be given preference as a group and individually evaluated in accordance with FmHA Instructions. Offers received after February 15, 1989, will be given priority in the order received but will be processed only if none of the applicants in the first group are acceptable.

The current established sale price is $150,000. No offers more or less that [than] this price will be accepted.

For information regarding eligibility, credit sale, or inspection of the property, contact the Farmers Home Administration office at 102 East Elm, Hartington, NE 68739, Telephone (402) 254-6859.

The Government reserves the right to reject any and all bids. The property will be sold without regard to race, creed, color, sex, age or national origin.

PREPARED STATEMENT OF PATRICK MCGIVNEY, BAGLEY, IA

Gentlemen of the Agriculture Committee:

I wish to thank you for coming to Iowa and allowing me to present my problems that I have encountered with the Farm Credit System of Omaha. There are many complaints that I have but I will only address two of these today and would like to expand on the rest at a later time if it would be possible.

The first complaint is the violation of the borrowers' rights to information. They have not been granted to me at anytime. Around September 26, 1986, I requested their values of my collateral after inspection had taken place September 17, 1986, that was in accordance with a mediation agreement signed September 11, 1986. Their response stated that all the information of values were in the letter, but the letter only actually contained a copy of my financial statement that I filled out on September 11 at the mediation and also contained that they would not give me my current property values. So I had to present a restructuring plan without their information of current values. This plan was never answered and instead foreclosure papers were filed without any further discussion.

The 1987 Farm Credit Act was passed and became effective on January 6, 1988. The borrowers' rights to information of appraisal values are granted in this law. On January 29, 1988, by registered letter, I requested restructuring of my loan under the guidelines of H.R. 3030 (the Farm Credit Act of 1987). On February 12, 1988, I was granted that right without any limitations of rights indicated. I then requested by registered mail on March 22, 1988, the current values of my property and cost of foreclosure. The loan officer (Terry Schott) answered by letter on March 25, 1988. Their letter contains not one single figure to work with, but instead a formula for the restructuring. This demonstrates to me the total lack of cooperation. Around the middle of May I contacted Senator Harkin's office about some of my difficulties. His office contacted Mr. James Kirk of FLB. A letter from Mr. Kirk on May 24, 1988, was received back and on page 2 in paragraph 5 beginning with "February to March" he acknowledges this letter and nothing was done about it when there were no figures given.

My restructuring plan was submitted on March 25, 1988. It included myself as the owner-operator of the property. Then the receiver tried to rent the ground to me. If I would have rented the ground I would have broken my own restructuring plan and also taken away money that would be applied to the loan payment and damage my cash-flow. They went ahead and rented the ground to a third party in 1988, so they destroyed my restructuring plan. They denied it. I requested my review with the review board and at it I told of the violation that had occurred. The review board which consisted of Steve Stanton, Jim Shapely, Glenn Mace, Paul Little, and Secretary Teresa Davenport. They upheld the denial and nothing was done about the violation of appraisal rights.

On June 19, 1988, a registered letter was sent to FCA Jim Billington informing him of the violation and requesting a right of second review. This was answered with a letter from Francis Boyd which states that they had applied for certification and upon completion of certification there would be a review of all denied loans.

I waited until October 20, 1988, and then contacted the Farm Credit System Assistance Board in Washington, DC. From there I was told to contact Kenneth Auberger and John Martin. I called Mr. Auberger who told me he knew of my file in Washington, DC. He told me to write John Martin in Omaha.

On November 16, 1988, I sent a registered letter to John Martin which was answered by Mark Browning on December 6, 1988. In it he states that the Special Assets Group has the duty to review all decisions not to restructure a loan.

By January 1, 1989, nothing was being done so I went to Mr. Grassley's office and asked him to inquire about my problems. On January 9, 1989, Mr. Kirk informed him that my loan will never come to the Special Assets Group because my foreclosure was filed before August 12, 1988. This is not written in the law and it is the second violation of my borrowers' rights by Mr. Jim Kirk. I believe that it is a deliberate attempt to cover up the first violation of right to information.

We have also plead this violation of rights in the Iowa District Court in Greene County and the Superior Court of Iowa. There has been no one that will ever address the violation. The State courts of Iowa are not fulfilling their duties in upholding the constitutional rights of the private citizen. The Farm Credit Administration is not fulfilling their enforcement of the law and now the Special Assets Group cannot fulfill its duties.

After 11 months of this runaround I believe that it is time for the Congress to step in and enforce the penalties for violation of the Farm Credit Act of 1987 against anyone who violates any portion of the act or allows it to be violated to the fullest limit. These penalties are a part of the chapter 12 U.S. Code secs. 2261 to 2273. If I understand them, they are cease and desist order with forfeiture of claims and payment of up to $500 per day for as long as the violation has lasted. If the violation harmed or caused a loss to the institution the person or persons may be removed from all duties in connection with the institution. In order to prevent further violations of other borrowers this must be addressed immediately. No other person should have to go through these violations if there is a law to protect the rights of the private citizen and his basic needs of food, shelter, and medical needs. It should be enforced to the limit. He should not have to try every court in the land to get his rights obtained.

I have included all of the letters that I have mentioned, my restructuring plan and a copy of the law which I am talking about. These claims have been documented in Greene County District Court and the Iowa Supreme Court of Appeals.

If further information is required I will try to be as cooperative as I can in obtaining it.

In summary, I would like to say that the exhibits with this statement should verify my claims on the violations of the borrowers' rights to appraisal values and the rights of review are not being granted. They also will show that the restructuring plan would be of least cost and would have saved them $22,750. Instead they rented the ground to a third party for $8,000 when they could have had a payment of $17,500 from me with the loan restructured. The legal cost has increased from $10,000 to more than $20,000.

This is losing the System's money. With this kind of management it shows how the Farm Credit System obtained its problems and continues to have problems.

I would like to thank you for this opportunity to present my problems and I will be awaiting your response.

PREPARED STATEMENT OF JUDITH A. DYE, UNITED METHODIST CHURCH AND COMMUNITY WORKER, NEBRASKA RURAL MINISTRY PROJECT

FMHA FARMER/BORROWER RESPONSE TO THE NOTIFICATIONS FOR DEBT RESTRUCTURING

I am Judith A. Dye, currently a United Methodist Church and Community Worker for the Nebraska Rural Ministry Project, and formerly a staff person for Interchurch Ministries of Nebraska Farm Crisis Hotline.

In November, the Interchurch Ministries of Nebraska Hotline sent letters to FmHA callers and at the same time the National Save the Family Farm Coalition sent to every delinquent borrower a letter recommending they contact Hotlines and other reliable resources in their State for assistance with the Notifications for Debt Restructuring.

Of the 2,200-plus delinquent borrowers in Nebraska, 150 contacted the Hotline from the time between the last week in November until mid-January. Many were overwhelmed by the number of forms and their complicated appearance but with some instruction and additional assistance, such as Hotline staff and/or community college financial analysis, expressed their ability to complete the forms.

The timeline constraints of completing the forms in 45 days, only half of that time in actual working days, and having received the form, once again, *directly* after a national election resulted in anger, suspicion, and extreme frustration at the Government's insensibilities. The arrival of the forms in the midst of *THE* major holiday season came when legal and financial expertise was least likely to be available and increase the farmers sense of disenfranchisement from this national lending source.

As of today, February 13, 1989, those Hotline callers who responded to the Notification fall in these categories:

(1) Those with less complicated situations appear to be being resolved;

(2) Those who have multiple lenders are showing up at the Nebraska Farm Mediation Service at both the lender and borrowers request;

(3) Some are drawing near the end of the 60-day FmHA response time and have had no response from FmHA to date;

(4) Those who are in some form of bankruptcy and already had worked something out; and

(5) Those who had already settled with FmHA and had not been taken off the list by FmHA.

It is not clear who has not responded and why they have not responded. A minority have declared to the Hotline they will not sign anything that looks like they are giving consent to give up assets. There is some evidence that another minority is demonstrating avoidance and they will not respond because previous nonresponse has appeared to have worked in their favor.

Another group is beginning to emerge since January 1, 1989. Those are borrowers who became delinquent or could become delinquent this year. Their concerns are:

(1) Is restructuring now open to them or do they need to wait 180 days? If open to them, when and under what conditions? Generally, Nebraska's FmHA county response to that has been, yes, and that the borrower's request would be put in line for consideration after those of previously delinquent borrowers.

(2) If a request is made for restructuring, can a borrower request a FmHA direct operation loan (DO) for this spring? If the answer is yes, then does the borrower have to wait until all the previous borrowers have been restructured, at which time a (DO) may be too late for use this spring?

At this time both Hotline and staff are awaiting the results of the 60-day response to FmHA borrowers before beginning to assist with appeal requests.

It should be pointed out that the Hotline is recommending the Nebraska Farm Mediation Service when it is applicable.

PREPARED STATEMENT OF LESLIE R. MURPHY, LINCOLN, NE

Senators, my name is Leslie R. Murphy.

From 1976 until 1984 I farmed 700 acres of irrigated cropland near Friend, Nebraska. The Federal Reserve—Reagan deficit induced recession of 1980–81 and the subsequent collapse of farmland prices destroyed my farm equity over $250,000 down a Republican rat hole. It appears that now the country is on the brink of another such recession.

In 1975 when my father died the 700 acres was valued at $1,250 per acre. Like quality ground is now just about back to that level.

Frank Kraus at Beaver Crossing, Nebraska was liquidated by the Federal land bank this past year. Over $1 million was realized from the sale of his assets and $390,000 went to liquidation costs. Frank filed chapter 11 September 1986. When the FLB at Omaha received their bailout funds they had already accelerated their liquidations. Frank filed for chapter 12 in 1987—petition was denied.

Liquidator's plan filed by FLB in December 1987—land—581 acres of Blue River Valley bottom ground sold on June 15 and machinery sold on July 15.

The GAO should investigate why a former State champion soybean grower and white corn producer who could have paid more to the FLB than they realized from the net sale of land and machinery was denied chapter 12 when his assets actually exceeded his liabilities. When the pimps took their cut there wasn't that much left.

I think a good case could be made for the GAO to investigate the action or nonaction of the FmHA and the FLB in Nebraska. For example: Do the Senators know that FLB Omaha now holds mineral rights on some foreclosed and sold farmland in Gage and Nuckolls Counties, Nebraska?

Southeast deals were cut with lower interest rates—8.5 percent for new buyers while other farmers were paying 10.5 percent, 11 percent, and up. FmHA and FLB were set up to be lower cost lenders to farmers. Now we will have a rejected "we need fewer farmers" Senator and "sit on their hands" FmHA and FLB administrators continuing to restructure farming in their own bigger is better image.

One of the last acts of Bob Bergland as Secretary of Agriculture was to have nationwide hearings on the structure of agriculture. The largely unread and ignored *As You Saw* must have been shredded. The structure of agriculture has changed and the structure of ag finance has also changed and not for the better.

When the institutions set up by the Federal Government that are supposed to serve farmers serve bankers and landholders more they should either get back to their assigned role or be shut down.

A good question for [K. Kirk] Jamison of FmHA was why all the deals on guaranteed loans taking ag *banks* off the hook and hanging farmers out to twist slowly in the wind then run over to Farmer Mac?

If the Federal land bank had an extra $900,000 lying around they might have better used it for interest rate relief and debt restructuring than buying into the next gambit for stonewallers and unemployed Republicans at Farmer Mac.

It is interesting that only after he has found a new home does the FLB Omaha manager decide Omaha maybe should merge with Minneapolis. How many farmers would still be in business if FLB Omaha had sold the building and got rid of the deadwood and restructured more loans if that was the cheaper alternative as Minnesotans did?

Why was the spokesman for FLB at Omaha never cited for contempt of Congress? I watched him lie to Exon and Zorinsky in Lincoln and I'm sure he lied when he testified in DC. Maybe he'll be the next spokesman for Farmer Mac.

I would suggest that the Ag Committee Senators and staffers thoroughly read Medvedev *Soviet Agriculture* to gain insight into what middle American agriculture might look like after the Republicans get done *collectivizing* it. When the least cost scenario is pushed to the extreme diseconomics of size and scale can surface.

Massive dislocations of farmers leads to deaths of small towns and whole regions become wasteland populated by trapped, impoverished old people.

More *low-cost* options for financing farms, farmsteads, and farm businesses are needed. Rapid retirement of marginal land and the continuing aging of farmers means that some kind of transition will have to take place. Whether we will move toward a more diversified responsive agriculture or continue to accelerate to mega farms only the Government and its farm program will tell.

Thank you.

OVERSIGHT ON THE IMPLEMENTATION OF THE AGRICULTURAL CREDIT ACT OF 1987

With Respect to the Farmers Home Administration and the Farm Credit System

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WEDNESDAY, APRIL 26, 1989

U.S. SENATE,
SUBCOMMITTEE ON AGRICULTURAL CREDIT OF THE
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Bismarck, ND.

The subcommittee met, pursuant to notice, at 10:07 a.m., in the Heritage Center Auditorium, Bismarck, ND, Hon. Kent Conrad (chairman of the subcommittee) presiding.

Present or submitting a statement: Senator Conrad.

STATEMENT OF HON. KENT CONRAD, A U.S. SENATOR FROM NORTH DAKOTA

Senator CONRAD. This hearing of the Subcommittee on Agriculture Credit of the Committee of Agriculture, Nutrition, and Forestry will come to order. I first want to extend a warm welcome to all in attendance and express my gratitude to the witnesses who are participating in this hearing here today.

This morning I thought we might observe a moment of silence so that each of us in our own way might give thanks for the moisture that we are receiving which is basic to life and which is the nourishment for all of us. So that if we might begin this hearing just with a moment of silence so each of us in our own way can give thanks.

[Brief moment of silence.]

I do not know about the rest of you, but I had a real feeling of elation as I got up this morning and saw that rain coming down. I arrived in North Dakota on Sunday and flying in, saw that blanket of dirt hovering over Bismarck. To have that rain come, I think, lifted all of our spirits.

I am particularly pleased to be in Bismarck to hold my first hearing as chairman of the Subcommittee on Agricultural Credit.

The purpose of this hearing is to review the implementation of the Agricultural Credit Act of 1987 and the problems faced by farmers and Farm Credit System institutions in North Dakota.

Before hearing from the witnesses, I would like to take just a few minutes to review the causes of the financial crisis in agriculture.

As most of you know, in the early 1980's net farm income fell sharply. After adjusting for inflation, net farm income in the first 5 years of the 1980's was lower than net farm income in the Great Depression years of 1930 through 1934. In fact, net farm income during the first 5 years of the 1980's was lower than any 5-year period since recordkeeping began in 1910.

Much of the decline in net farm income was caused by the economic policies of the Federal Government which raised real interest rates and the value of the dollar to record levels. The high interest rates raised farm production costs by literally billions of dollars. The overvalued dollar sharply reduced grain exports and profits. Between 1980 and 1987, the value of feed grain and wheat exports dropped by a full two-thirds (about $12 billion).

The policies of the 1980's drove commodity prices to the lowest levels, after inflation, in over two decades. The market value of feed grains, food grains, and oilseeds dropped by over 50 percent—over $25 billion—between 1980 and 1987.

Farmers in North Dakota and throughout the Nation saw the value of their land drop by 50 percent or more. In North Dakota, farmers lost nearly 50 percent of their net equity holdings—over $12 billion according to data from the USDA. In other words, in 6 short years, North Dakota farmers lost nearly half of their wealth—an average of $350,000 per farmer.

The value of farm holdings dropped so drastically because the prices and income that supported that value declined so dramatically.

Only once before in this century have farmers suffered such a sharp and sustained decline in farm income and farm asset values—that time period was the Great Depression.

The effects of the farm financial crisis spread rapidly to farm banks, the Farmers Home Administration, and the Farm Credit System institutions. Literally tens of thousands of farmers were unable to make their loan payments. In addition for many farmers, the value of their assets had fallen below the value of their loans.

In the 1980's, more farm banks failed than in the previous 45 years. We are fortunate that only a couple of banks have been lost in North Dakota. For bank lending officers, employees of the Farmers Home Administration, and Farm Credit System institutions, it was an extremely difficult time, as they often had to foreclose on life-long friends and neighbors. By 1985, however, many lenders—both private and public—were beginning to restructure loans when such restructuring would return more to the financial institution than foreclosure. Among Farm Credit System institutions, the Fargo institution was one of the first to restructure loans when the System would benefit.

By early 1987, the Farm Credit System was in very serious financial condition. Farm Credit System experts, farmers, and the Congress had become convinced that without Federal action, the Farm Credit System could collapse.

Let me read briefly from the opening statement of Senator David L. Boren of Oklahoma as he chaired the first hearing of 1987 on the FCS crisis.

"We are now faced with what I would call a vicious cycle. Estimates ranging from $4 to $8 billion are floating around in terms of the amount the Farm Credit System may need to keep it fully effective and fully solvent. . . .

"The System has had rather significant losses recently. In 1986, for example, that loss was $1.9 billion. Coupled with significant losses, there have been declines in loan volume within the System ranging from 15 to 20 percent over the last 2 years. At the same time, interest rates prevailing in the System have been higher than those offered by many other competing lenders. This has caused many of the more high quality borrowers with the System to leave it and go to other lenders where they could receive lower rates of interest.

"This means, of course, that a larger and larger proportion of the borrowers that remain in the System are those that are less able to meet their current principal and interest payments when due on their loans.

"The high interest rates that continue to prevail, of course, also make it more and more difficult for those farmers, who are on the borderline, to remain in business."

Senator Boren's statement continued and I quote:

"For the second consecutive year, loan volume declined by more than $12 billion, leaving the System with gross loans outstanding of $54.8 billion at year-end. Of this amount, $7.1 billion are nonaccrual loans and an additional $5.7 billion are considered 'other high risk.' Thus, only 77 percent of the System's loan portfolio is currently not considered to be at risk. The relative increase in the share of nonaccrual loans as a proportion of total assets, in conjunction with increases in other nonearning assets, including acquired property, is weakening the System's ability to generate sufficient interest income to cover its operating expenses."

Senator Boren closed his statement by saying:

"The future of the Farm Credit System consequently does not look very good. Price Waterhouse & Co. issued a qualified audit opinion on the basis of not being able to determine how the System can remain viable in the future. In the near future, it appears that we can expect higher charge-offs as nonaccrual loans are liquidated, and there is little prospect for increasing loan demand. Continued pressure to reduce rates on loans and accumulated deferred obligations from the use of RAP [an accounting technique] will lower earnings even if the quality of the loan portfolio stabilizes. As a result, Federal assistance appears likely to be needed soon."

Senator Boren accurately described the situation in the Farm Credit System. The financial markets reflected this worsening condition of FCS. In the 1960's and 1970's, FCS bonds traded about 20 basis points (two-tenths of 1 percent) above U.S. Government Treasury bonds of comparable term. By 1987, FCS bonds were trading at 130 to 135 basis points (1.3–1.35 percentage points) above U.S. Government bonds. That full percentage point increase in the cost of FCS bonds had to be passed onto borrowers.

The situation in the Farmers Home Administration was similar to that of FCS. By early 1987, FmHA, nationally, had $7.6 billion in loans in nonaccrual status. In fact, many of the borrowers had already gone out of business. In addition, FmHA was tied up in court over its failure to follow the law and its own regulations. Compounding this problem was the refusal of FmHA officials in Washington to deal with the situation in a rational way. The former Administrator of FmHA refused to restructure loans even when such restructuring would have saved money for the U.S. Treasury. He refused to restructure FmHA loans even though admitting that as a private creditor he had often restructured loans when it was to the benefit of the financial institution which with he was associated.

That is the situation that Congress faced in 1987—an FmHA with billions in nonaccrual loans which refused to rationally deal with the farm recession, and a Farm Credit System near collapse. To compound the risk, if Congress had failed to rescue the Farm

Credit System, the financial markets underlying our home mortgage industry would have been severely harmed.

Since the passage of the Agricultural Credit Act of 1987, Farm Credit System bonds are selling at interest rates only slightly above U.S. Treasury bonds—about four-tenths of a percentage point instead of 1.3 to 1.35 percentage points. FmHA has begun the arduous task of evaluating nonaccrual loans. Those farmers who can pay back more than FmHA could obtain through foreclosure and who can show that they can stay in farming will be given the opportunity to continue.

The 1987 legislation was not perfect and, certainly, the farm credit situation is not perfect, but I believe we have made real progress in getting through the farm recession in the 1980's. Like the 1930's, lending institutions have written down or written-off millions of dollars in debt. And, like the 1930's, thousands of farmers have lost their land and thousands of small businesses have lost their businesses. All of us are eager to get on with the future.

We are here today to evaluate and review the Agricultural Credit Act of 1987. We want to make both the Farm Credit System and FmHA work better for farmers in the future.

Let us proceed with our first witness.

I want to call to the witness table Ralph Leet, the State Director of Farmers Home Administration of Bismarck.

Welcome, Mr. Leet. Please proceed to the witness table. We are pleased to have you here with us this morning, along with your associates.

I want to begin, before Mr. Leet goes into his testimony, by complimenting Mr. Leet and FmHA on the enormous effort that State FmHA employees have made to implement this very complex act. I must say to you this cannot have been easy.

We know this has been an extraordinarily difficult time for you, Mr. Leet, and your agency and the dedicated employees of FmHA, and we appreciate the very substantial effort that has been expended to attempt to implement this act.

I also want to thank you in advance for your efforts to compile the data that you have brought to the hearing this morning. I know that that was not an easy thing to accomplish either.

With that, I will notify all witnesses that we ask you to summarize your testimony in 10 minutes. After Mr. Leet has concluded his statement, I will question him.

Then, Mr. Leet, if you would remain at the table, we will have some other witnesses and perhaps we can get a dialog going that would be productive for all of us.

Let me also indicate to the audience that we are here under the official rules of the U.S. Senate. That means several things. Number one, it means that we are going to accord each and every witness the kind of courtesy and respect that each of us would want to have if we were serving as a public witness. That also means that there will be no outbursts that are tolerated, either in approval or disapproval of what a witness says. We want people to feel free to say what they believe to be true and to have a full chance to express themselves.

I think we have a very balanced witness list here this morning. In addition, there will be time for public comment both at the end of the morning session and at the end of the afternoon session. So I think people will have a full chance to express themselves.

With that, Mr. Leet, welcome, and please proceed with your testimony.

STATEMENT OF RALPH H. LEET, STATE DIRECTOR, FARMERS HOME ADMINISTRATION; ACCOMPANIED BY ROBERT O. ZIMMERMAN, CHIEF, FARMER PROGRAMS, BISMARCK, ND

Mr. **Leet**. Thank you, Mr. Chairman and members of the committee. I appreciate this opportunity to discuss the Farmers Home Administration (FmHA) servicing regulations pertaining to the implementation to the Agricultural Credit Act of 1987.

I will be covering the questions you raised in your April 13, 1989, letter to Mr. "Sox" Johnson, our Acting Administrator.

REGULATIONS AND IMPLEMENTATION

As a result of the Agricultural Credit Act, a massive effort was made by our national office staff and their attorneys to write the regulations that would properly implement the act. I understand that many hours of overtime were put in by staff members in order to get the regulations written, published in the Federal Register, and finalized. We believe the direction and the guidance from Washington was very adequate, and there has been considerable dialog between our office and the national office on the questions and answers involved in the implementation of the act, and this dialog continues today.

TRAINING SESSION

As soon as the regulations were published, a training session was put on by the national office staff beginning September 19, 1988, and we sent all our District Directors, Program Review Assistants, Farmer Programs Chief and specialists to this meeting. This meeting lasted 3 days and as soon as the district people came back, we gave them 1½ days to prepare training plans. Each District Director then held a 3-day training session beginning the following Monday, September 26, for their county office staffs using Farmer Programs staff and the Program Review Assistants to help in training.

PUBLIC INFORMATION MEETINGS

When this initial training was completed, we then embarked on *public* information meetings held in counties so the public could be aware of the implications of the act and what they had to do to comply. The information meetings, we think, were very successful in getting information out to the public. The District Directors conducted these meetings so we had consistency in delivery.

In addition to our information meetings, the North Dakota Agricultural Commissioner put on meetings, and I believe the credit counselors from the State Review Board put on meetings. Great efforts were made to inform the public of the law, of borrowers' rights, and details of the act.

CONTROLLED BY THE STATUTORY PROVISIONS OF THE FARM CREDIT ACT OF 1987

We were, and are, controlled by the statutory provisions of the Farm Credit Act of 1987. Any account over 180 days delinquent must be notified. The borrower has 45 days to respond. FmHA has 60 days to review and work with the borrower. However, we did recognize a good faith effort and used what was termed the "rule of reason" when reviewing all responses.

RESPONSE TO THE PROGRESS WE HAVE MADE ON DELINQUENT BORROWERS

In response to the progress we have made on delinquent borrowers, we have complied with the deadline of the primary servicing program of the act, and we are now in the process of mediation and considering buyout at net recovery. This will be taking a great deal of our time in the next 1, 2, or 3 months in order to get through this part of the implementation of the act. The whole process will start over in July as we will have a new group of 180-day delinquent borrowers to go through this process.

Our records show that of the 2,307 borrowers who were sent packets, 606 are rescheduled and/or reamortized, 233 were offered debt write-downs, and 209 were offered interest rate, write-downs—reschedule, reamortization, write-down and interest rate reduction often occurred in combination in the delinquency resolution process.

Approximately 1,431 delinquent borrowers were considered for primary servicing action, and 505 were referred to mediation. Of the 876 delinquent borrowers who did not return their packets, many have already discontinued farming. Some have or will have their debts settled through our regular debt settlement program, some still have preservation rights which we will look at.

Overall, I think our staff has done a good job in the implementation of the act.

I have Mr. Robert Zimmerman, Chief of Farmer Programs, and others, with me. We will try to answer any questions that you or other members of the committee may have. Thank you.

Senator **Conrad**. Thank you. If you would like to have Mr. Zimmerman join you at the table, that would be certainly fine.

Just for the record, Mr. Zimmerman, if you would give your name and the title of your position, that would help our court reporter.

Mr. **Zimmerman**. My name is Robert O. Zimmerman and I am the Chief of Farmer Programs in North Dakota.

Senator **Conrad**. Thank you very much.

Mr. Leet, as I moved around the State and as we have been contacted by farmers across the State who are FmHA clients, we have gotten a series of questions. I would like to take this opportunity for you to have a chance to answer questions that have been put to us.

Did borrowers in the process of applying for primary loan servicing or going through mediation get operating loans for this cropyear?

Mr. Zimmerman, if you would like to answer, it is fine.

Mr. **Zimmerman**. If I may answer. Farmers Home Administration does have provision for what we call continuing operating type loans. There is a special instruction. It has qualification requirements which are quite stringent, but it does afford opportunity for annual operating loans in cases where there is not full payability for all farmer indebtedness.

This would be a situation where, as we are considering the Agricultural Credit Act of 1987 rights to the borrower, that the process had not yet been concluded, and operating credit through this particular program could be considered under the provisions of those specific provisions until a final decision is made.

Senator **Conrad**. Let me ask this: Are the County Supervisors instructed to notify delinquent borrowers of the continuation policy?

Mr. **Zimmerman**. In response to that question, the notification forms that are sent out to delinquent borrowers I do not believe contain a specific notification of that portion of our instruction that talks about that issue, about those continuing operating loans.

The paragraph—the regulations do contain the information for those operating credits. But I cannot recall a place in the notification that specific notification is given to the borrower on continuing operating loans.

Senator **Conrad**. Do you think it would be a good idea to have such notification?

Mr. **Zimmerman**. It might well be appropriate to include it in the notification, in the attachment.

Senator **Conrad**. All right. As I understand the law, a borrower may appeal any adverse decision by FmHA, yet I am told that the State Director of FmHA has made a ruling that a borrower may not appeal the first decision that FmHA makes in response to the borrower's application for primary loan servicing.

Mr. Leet, could you explain the rationale for that?

Mr. **Leet**. Mr. Zimmerman why don't you answer that? Do you understand the question?

Mr. **Zimmerman**. Senator, I do not understand the question either. I do not understand at what point the agency is not giving appeal rights.

Senator **Conrad**. All right. We have heard a fair amount about this issue from farmers and organizations working for farmers. Let me repeat the question and maybe that will help clarify it. If not, if we have some of the others join us, I think perhaps we can get at it through a discussion period.

I think we would agree that under the law a borrower has the right to appeal any adverse decision by FmHA.

Mr. **Zimmerman**. That is correct.

Senator **Conrad**. Correct. I am told that a ruling has been made that a borrower may not appeal, though, the first decision that FmHA makes in response to the borrower's application for primary loan servicing.

Mr. **Zimmerman**. I am still unable to understand how we might address the question. The attachment that is sent to the borrower does offer appeal rights, and as to my knowledge, we would be carrying through at every opportunity for the borrower to exercise appeal rights.

Mr. **Leet**. What is the first decision we are talking about?

Senator **Conrad**. Well, do we have anybody here today that would want to give an example?

[Member of the audience stands.]

Senator **Conrad**. Yes, Lane. If you would identify yourself for the record.

TESTIMONY OF LANE LANDENBERGER, RESEARCH ANALYST, NORTH DAKOTA AGRICULTURAL MEDIATION SERVICE, BISMARCK, ND

Mr. **Landenberger**. My name is Lane Landenberger. I am a Research Analyst with the North Dakota State Agricultural Mediation Service.

I am not sure if this is the exact situation we are talking about, but it has come to our attention in a number of cases where, if Farmers Home offers to restructure and the farmer does not agree with some of the numbers that are used on the farm and home plan that may have been changed by the Farmers Home Administration, at that point the farmer does not have an opportunity to appeal that decision because he has not been told—it is not an adverse decision.

Mr. **Zimmerman**. If I can respond to that. We would not agree that the borrower's not getting appeal rights. It can happen that information is provided to Farmers Home Administration by the borrower and that information is to be on the basis of a 5-year history and is best information in terms of prices and so on that can be provided.

The County Supervisor needs to make a determination as to whether or not the information as provided would be accurate as we would see it according to the records and material that we would best have available.

It may happen in cases that we do not agree that we would be looking at the borrower's information and his Farm and Home Plan and we may then prepare separate numbers and run what we call a DALR$ program on both and render a decision on whichever we would see as being the most accurate.

Then a borrower would be given the determination and he would ultimately get appeal rights if the decision was not in his favor. It may not happen at what you call same day, but that action would have appeal rights, certainly, if it was not in the borrower's favor.

Senator **Conrad**. Well, I am not sure that we have gotten to the bottom of this question, but let me pursue it in a little different way.

I repeatedly have farmers tell me that they are not given an adequate explanation of why their Farm and Home Plan was rejected by the DALR$ program. I understand the computer printout that FmHA is required to send the borrowers, along with its decision, is complex and in some cases difficult to understand.

But what we are hearing is "Senator, we send in a Plan and we get back an answer that it is rejected and we get a printout which shows the results of the DALR$ program and we do not really have an understanding of what factors in the Plan might be changed marginally that would lead to a different result," and that there is insufficient communication about the application of the DALR$ program.

Mr. Zimmerman could you respond to that question?

Mr. **Zimmerman**. Yes, Senator, I could. If we are in a situation, as I am understanding you to describe, that Farmers Home Administration is denying what we would call primary servicing on the basis of, say, for example, payability or feasibility, we would be sending to the borrower, ultimately, with our decision, what we would call attachments 5 and 6.

Attachment 5 would be the denial of primary loan servicing actions and it would explain to the borrower what the decision was and it would also explain the borrower's course of action or reaction.

The attachment 6 is a form that is provided for the borrower to respond. Attachment 6 not only allows the borrower to respond by asking for an appeal hearing, it also advises him that he could respond by requesting a meeting, and the meeting could be held within—or requested within a 15-day period, at which time he could come in and sit across the table from the County Supervisor and discuss the Farm and Home Plan and they could be talking about exactly why the rejection was given, and so on.

So the provision of attachment 5 explains the fact that the borrower does have access to a meeting and it does tell about appeal rights, and the attachment 6 is the form that the borrower could submit to Farmers Home Administration requesting that these actions be considered for him.

Senator **Conrad**. Well, let me ask this: When you send out a rejection of the initial plan, do you include something other than the computer printout itself or the DALR$ program?

Mr. **Zimmerman**. I believe what we would be sending out would be attachment 5 with attachment 6. That is our notification of rejection. It is a form for the response. And we would be sending out a copy of the DALR$ program. I believe that those are the three things. And that is all that I am aware of that is sent out with attachment 5.

Senator **Conrad**. From what the farmer receives, do you think the farmer can adequately understand specifically the reasons for the rejection?

Mr. **Zimmerman**. The DALR$ program can be quite lengthy, and I would believe that a farmer should be able to eventually get through the thing to understand that his loans are listed, that a balance available that he had submitted in his Farm and Home Plan, and that these do not match. It does explain the different steps in the process, although the explanation may be in numbers and it is not necessarily in long, narrative paragraphs.

I think that in many cases the farmer borrowers are getting the assistance of the North Dakota credit counseling persons in analyzing those DALR$ programs and they, with the credit counselors, oftentimes are approaching county offices to review them.

Senator **Conrad**. Let me ask it this way. What I am hearing over and over from various organizations that are dealing with farmers, and farmers themselves, is that it is not clear to them in some cases what factors could be altered in order to not have their application rejected. In other words, there are a whole series of assumptions that go into a Farm Plan. Correct?

Mr. ZIMMERMAN. That is correct.

Senator CONRAD. Planning assumptions, price assumptions. Fairly small changes in those assumptions can lead to dramatically different results.

What I am picking up from people is: "We do not really have a chance to work with FmHA to devise a Plan that has the best chance of working. We send in a Plan, we submit it, we do not have really a conversation about it. We do not have a chance to modify it. We do not have a chance to work with those who are making the ultimate decision. It comes back rejected and in some cases it is not clear why it has been rejected."

But more disturbing, I guess, from what I pick up from people who have dealt with the process is they have not had a chance to really have a dialog with FmHA staff to discuss what factors they could change to make their application acceptable.

How would you respond to people who register that complaint?

Mr. ZIMMERMAN. I guess first of all, in the go-around that we just had, Farmers Home Administration was working with a tremendously large number of delinquent borrowers, a gathering of delinquencies for several years.

The notifications did go out in North Dakota to over 2,300 delinquent applicants, and the delinquent applicants had a 45-day period to respond and Farmers Home Administration had 60 days to respond to their applications.

As much as possible, we would certainly like to give individual attention and work with farmers in preparing Farm and Home Plans, if that has been the history with that particular borrower.

Oftentimes many farmers can do their own. Most farmers can do their own and do a pretty good job. But there are some that need some help. And if we can help those, certainly we would try, as time and deadlines allow.

The DALR$ program and the Ag Credit Act, or the servicing regulations that we have to work with, specify that the input data for production would be based on history and that data for planning prices, and so on, would be the best planning price guidelines that we in Farmers Home Administration could make available to the extent possible.

So I guess that there would be some basic continuing situations with that farm that should remain from one planning to another, that the input costs for the crops that they planned would be a certain amount, that there is going to be a certain price, and that his financial statement shows that he has specific debt repayment that must be paid. Those are the assumptions that go into the DALR$ program. And the DALR$ program analyzes them, you know, to the best extent.

So I guess what I am saying is that basic information which should have been accurate should have gone into DALR$, and DALR$ then should have done a good job of responding with that situation, taking all debts into account to arrive at a determination.

The determination would be that the borrower either has a balance available which would sufficiently cover the debt structure that he has to repay, or it might come out short.

If it comes out short, then we would be denying the proposal on the basis of feasibility and then eventually we would be getting into the denial and offering the meeting, at which point we could explain what happened with the Farm and Home Plan and with the balance available compared to debt. There would be appeal hearing rights for that purpose.

In regard to the appeal hearing—or the meeting with creditors and the DALR$ program, the—I guess it is difficult to—the DALR$ program does not include the Farm and Home Plan numbers in it. So the DALR$ program does not show the Farm and Home Plan. It only shows the balance available.

But at the meeting, we could be explaining the Farm and Home Plan, comparing it to the DALR$ program and its results.

Senator CONRAD. Do you do that?

Mr. ZIMMERMAN. I would believe that we do. If the borrower comes in and asks—first of all, if the borrower requests the meeting. If they do not request the meeting, of course we do not. But if they request the meeting and come in, we would take the time at a meeting appointment to explain the DALR$.

Senator CONRAD. Let me just nail this down and then we will go back to a question I asked earlier, because I found some additional detail that might help us get to the bottom of the previous question I asked.

As I understand what you have indicated here, if a borrower requests to come in and review with your County Supervisor in some detail the reasons that he was denied primary loan servicing, the County Supervisor would be available to do that?

Mr. ZIMMERMAN. That is correct.

Senator CONRAD. All right. Let me go back to the earlier question that I was trying to get at, and that is the question of whether or not there is the right to appeal at every stage.

We have agreed that any adverse ruling by FmHA has appeal rights that go with that. Correct?

Mr. ZIMMERMAN. That is correct.

Senator CONRAD. Here is the representation that has been made to me. There are reports from borrowers that FmHA in North Dakota will not allow a borrower to appeal the proposal given by FmHA. When a borrower returns the packet and receives a determination by FmHA with an offer, that borrower cannot appeal that decision.

They go on to say, it is a North Dakota ruling from the State office that the borrower has to have foreclosure or liquidation proceedings started on him or her to be able to appeal.

Mr. ZIMMERMAN. If I can respond to that?

Senator CONRAD. Yes. Please do.

Mr. ZIMMERMAN. There would be appeal hearing rights along the way at every point of denial or of adverse decision. It might be that borrowers are not recognizing where they are compared to where the instruction and we are along this course of action.

But at a point where Farmers Home Administration is making an adverse decision for its records and for its purposes in getting to the next step along the process that we have outlined for us in our regulations, there would be appeal hearing rights.

Appeal hearing rights would be exhausted before Farmers Home Administration would accelerate an account for liquidation purposes. So it would be our intention that—I guess opposite of what has been stated, appeal hearing rights would be exhausted before we liquidated an account, rather than given after an account is accelerated.

Senator CONRAD. All right. Let me just repeat to make sure we have a meeting of the minds as to what the answer to the question is.

As I hear you answering, you are saying that it is not a North Dakota ruling that the borrower has to have foreclosure or liquidation proceedings started before he is allowed to make an appeal—he or she.

Mr. ZIMMERMAN. That is correct.

Senator CONRAD. All right. Hopefully, we can resolve other questions as easily as that one.

Are you allowing your County Supervisors to require that a borrower agree to provide additional collateral before they may be restructured?

Let me just clarify by saying it has been told to me that in some cases County Supervisors are asking for additional collateral when the law indicates that FmHA may not require additional collateral for past loans.

Mr. LEET. Not to my knowledge.

Mr. ZIMMERMAN. That is correct. To our knowledge, that is not happening. Our regulations indicate that we are not—the Farmers Home Administration is not to ask for additional collateral for the purpose of restructure under this program.

Senator CONRAD. So we would have an agreement in terms of what the law says?

Mr. ZIMMERMAN. That is correct.

Senator CONRAD. The law says no additional collateral may be required as a condition of restructuring. It has been represented to me that there are cases in which this has occurred. Although I do not have the proof of it. I raise this issue so that it can get answered. If there were cases where a County Supervisor had called for additional collateral, they would be just mistaken?

Mr. LEET. We would want to know about it.

Senator CONRAD. You would want to know about it and correct it?

Mr. LEET. Yes.

Mr. ZIMMERMAN. I would like to add, though, that if there are additional loans made in conjunction with or at the same time, it would be conceivable to ask for collateral, not because of the restructure but because of the new loan that was made besides the servicing.

Senator CONRAD. That would be for the new loan; it would not apply to previous loans?

Mr. ZIMMERMAN. That is correct.

Senator CONRAD. All right. Thank you for that clarification, because there could be confusion on that point.

Let me ask this question on appraisals, because this is another area where we have had lots of questions.

There have been complaints that appraisals are not done by objective parties, that there have been some inflation of assets, and that appraisals in some cases have been kind of windshield appraisals, as we used to say in the property tax business, rather than the kind of full and complete review that we might expect with an appraisal. Can you respond to that concern?

Mr. LEET. I would say that with the press of work we have hired many contractors to do our appraisals and they are basically qualified to be appraisers. Certainly we would expect a contract appraiser to do his job.

And if it is a windshield appraisal, we would like to know about it. It should be objective, however, because that is what they have been paid for.

An appraisal is an opinion of the value of a piece of property at a certain period of time, and it should not be deflated or inflated for any reason because that is no longer an appraisal.

Senator CONRAD. Let me ask this question. Do you require an FmHA representative to participate in mediation requested by an FmHA borrower?

Mr. ZIMMERMAN. Farmers Home Administration is required under the act to participate in mediation when a mediation is called. That is correct.

Senator CONRAD. Does that representative have the authority to adjust original determinations by FmHA of restructuring options for the FmHA debt during the mediation process?

Mr. ZIMMERMAN. Yes and no. Only to a certain extent. Depending on what happens during a mediation proceeding, depending on what kind of adjustments other creditors and other lenders are able to make, Farmers Home Administration Supervisor could rerun the DALR$ program, and it is conceivable that the result would be a positive or a favorable decision in terms of restructure that the County Supervisor could make.

If it meant a debt write-down or a buyout at net recovery value, that result would have to be sent to the State office for a State director concurrence.

So the answer, I guess, is yes there are certain determinations that they could make, but there are others that cannot be made without State office concurrence. And those authorities are outlined in the procedures.

Senator CONRAD. Those authorities are outlined in the procedures and are revealed to the borrower before the meeting?

Mr. ZIMMERMAN. I do not know that there is a summary or an opening statement that talks about all of the authorities and the possible outcomes at the beginning of mediation. I doubt it.

But I am sure that would the question come up during the course of the mediation with adjustments being made, our supervisor would indicate whether he would have to take a write-down or a buyout situation back to State director authority before he could render that decision. I would be positive that that statement could be made and would be made.

Senator CONRAD. One of the problems in the mediation process that has been attested to is that borrowers in mediation discovered that previous appraisals, values, and determinations are not negotiable, that they are set in stone, and borrowers find they must go through an appeals process if they object to the previous figures and thereby lose any benefits that mediation might have provided. This goes at the same sort of question that I previously asked. Would you react to that?

Mr. ZIMMERMAN. I would try to answer that question this way, that Farmers Home Administration has notified the borrower, of course, and we have received from him a Farm and Home Plan, projections, his proposals for operation.

By the time that Farmers Home Administration goes to mediation with the borrower, Farmers Home Administration has considered everything that its authorities allow in terms of primary loan servicing. We have gone to the extent—or the agency has gone to the extent that it can possibly go with the scenario or the situation that has been presented.

In going to mediation, the reason that Farmers Home Administration would be going to mediation is because of the fact that the agency has gone to the extent that it can go under its regulations and that adjustment would be required from other creditors in order to go any further.

And so we are at mediation with the borrower and Farmers Home Administration and the hope is that, if adjustments can be made, that a more favorable decision could be made by Farmers Home Administration as a result of those adjustments.

We, I guess, are not at the point of making an adverse decision yet and so we are not talking about changing the appraisal, and so on, at that point.

If mediation does not result in the borrower being able to continue under primary loan servicing and it does happen that the Farmers Home Administration still has to deny the proposal or deny servicing, that would be done on the attachments 5 and 6 that I previously mentioned. And in those notifications, there will be appeal rights for the borrower, including appeal of the appraisal that was presented.

Senator CONRAD. OK. One other question I will ask you: Does FmHA object to the borrower bringing a court reporter or a tape recorder to mediation sessions?

Mr. ZIMMERMAN. To mediation? I guess I have not heard that request coming up, but I do not see a problem with it.

Mr. LEET. I do not see a problem with that.

Senator CONRAD. All right. Thank you very much for answers to those questions. Perhaps we will get to further pursue them with the additional witnesses.

[Material supplied by Robert O. Zimmerman, Chief, Farmer Programs, Bismarck, ND follows:]

U.S. Department of Agriculture,
Farmers Home Administration,
P.O. Box 1737, Bismarck, ND, June 9, 1989.

U.S. Senate,
Attn: Christine Sarcone, *Chief Clerk,*
Senate Committee on Agriculture, Nutrition, and Forestry, 328-A Russell Senate Office Building, Washington, DC.

Dear Ms. Sarcone: Enclosed is the transcribed copy of testimony presented to the Committee on Agriculture, Nutrition, and Forestry in Bismarck, ND on April 26, 1989, relating to the testimony which I provided. I am returning the transcribed copy and am enclosing a photocopy of my April 27, 1989 letter which clarifies statements that I made at that Senage Ag Committee Hearing pertaining to certain FmHA Instruction 1951-S attachments. I had sent that April 27, 1989 letter with its attachments directly to Senator Conrad. I would like this material to be made a part of the testimony provided. If you have any questions, please contact this office.

Robert O. Zimmerman,
Chief, Farmer Programs.

P.S.—Ms. Sarcone—My comments referred to are on pages 49-52 of the testimony transcription.

[The April 27, 1989 letter, to Hon. Kent Conrad follows:]

U.S. Department of Agriculture,
Farmers Home Administration,
P.O. Box 1737, Bismarck, ND, April 27, 1989.

Honorable Kent Conrad,
U.S. Senate, Washington, DC.

Dear Senator Conrad: Although I am not able to precisely recall the exact scenario presented and/or the line of questions asked at your April 26, 1989 Senate Ag Credit Committee Hearing relating to exhibits used by FmHA for response relaying FmHA denial determinations for primary loan servicing, I am concerned that I might have misstated FmHA use of notification exhibits.

If FmHA is responding with denial of FmHA loan servicing under its 1951-S regulations because of lack of feasibility in an operation proposal submitted by a borrower, this agency would respond by sending the borrower FmHA "attachments 5 and 6." Copies are enclosed for your review.

If, however, FmHA has progressed in the process with the borrower to the point where this agency has concurred in the farmers proposed plan and has notified this borrower (by FmHA exhibit F) with an offer to approve "primary service" action (i.e., reamortization, reschedule, limited resource, interest rate, debt write-down and etc.) and if that borrower either notifies FmHA that he will not accept that primary servicing offer or he does not respond at all within the 45-day time limit, FmHA would proceed through the loan servicing procedures by sending this borrower loan servicing denial through attachments 9 and 10 (copies enclosed). I believe that in my testimony, I stated that attachments 5 and 6 would be used in this scenario (which was incorrect as per FmHA Instruction 1951.909(h)(1)).

I am enclosing for further clarification copies of applicable paragraphs of FmHA Instruction pertaining to use of attachments 5 and 6 and attachments 9 and 10. In either event (FmHA use of attachments 5 and 6 or attachments 9 and 10) borrowers are offered an opportunity to meet with the County FmHA official and/or have an administrative appeal hearing.

If it is still possible to enter this letter as correction of my April 26, 1989 testimony for your Senate Ag Credit Subcommittee Hearing, I request that this be done as it is my intention to provide accurate information. Also, I apologize for any inconvenience this followup information may cause regarding your committee responsibilities and public information.

If you have any questions regarding the above or other matters pertaining to FmHA servicing activities, I would be happy to respond.

Sincerely,

Robert O. Zimmerman,
Chief, Farmer Programs.

[FmHA Instruction 1951-S, section 1951.909, attachments 1, 2, 5, 6, 9, and 10 and FmHA Instruction 1951-S Exhibit F to Subpart S follow:]

notification will set forth the specific facts requiring cancellation and inform the borrower of appeal rights in accordance with Subpart B of Part 1900 of this chapter. If the borrower does not appeal or if the FmHA decision to cancel is upheld in an appeal, the borrower will be notified in writing of cancellation date of the set-aside. The actual cancellation action is not appealable.

(C) The County Office will be responsible for notifying the Finance Office of the cancellation action using a properly executed Form FmHA 1951-6 prepared according to the FMI.

(iv) Requirements for servicing set-aside loans are as follows:

(A) Loan notes which are rescheduled and contain set-aside provisions in accordance with this section will not be consolidated during the set-aside period unless the borrower agrees in writing to the cancelation of the set-aside if consolidation is approved.

(B) Loan notes which are rescheduled and do not contain set-aside provisions in accordance with this section may be rescheduled or reamortized in accordance with this subpart during the set-aside period. The rescheduling or reamortization action may be the limited resource rate, if applicable. The set-aside amount will stay in effect, but will not be increased or intensified beyond the original five-year term. The County Office will forward to the Finance Office Form FmHA 1965-22 and Form FmHA 1965-23 any time the interest rate is changed on a note during the set-aside period. The top of the form will be marked in red "Interest Change in Set-Aside."

(v) Deficiency judgements. Interest will begin to accrue (at the higher of the current interest rate or the judgement interest rate) on the set-aside portion if FmHA receives a deficiency judgement.

(5) Write-down of FmHA loans. Priority consideration will be given to writing down farmer program loans whenever such write-down will facilitate keeping the farmer on the farm or ranching operation. The following conditions shall be met for write-down of FmHA loans:

(i) No other Primary Loan Service Program nor any combination thereof will produce a feasible plan that will allow the borrower to continue the operation;

(ii) A feasible plan must be developed that will result in a net recovery to the Government which is equal to or more than a net recovery from an involuntary liquidation or foreclosure;

(iii) The borrower must present a preliminary plan that demonstrates that the borrower will be able to:

(A) Meet the necessary family living and farm operating expenses, and

(B) Service all existing and planned debts, and

(C) Comply with the Highly Erodible Land and Wetland Conservation requirements of Exhibit M of Subpart G of Part 1940 of this chapter, if applicable, and

(D) Borrower must agree to a Shared Appreciation Agreement if the loan(s) is secured by real estate.

(iv) The borrower should participate in a meeting with creditors if it is necessary that the borrower's creditors make some debt adjustments that will permit the development of a feasible plan. This meeting may be in a Certified State Agricultural Mediation Program or a meeting of creditors arranged by FmHA, the borrower, or other creditor. Failure by the borrower to participate in meetings with FmHA and other creditors will be noted in the case file. Failure to participate will be listed as a reason for the intended adverse action on Attachment 5 Exhibit A of this subpart.

(v) Rates and Terms. Remaining debt after restructuring with the Primary Loan Servicing Programs will be rescheduled, reamortized, or deferred in accordance with paragraph (e) of this section. The borrower must agree in writing to the cancellation of a fully or partially set-aside portion of the loan(s) if a write-down is approved.

(f) Determining value of net recovery from involuntary liquidation. Within 60 days of the County Supervisor's receipt of a complete application which requests Primary and Preservation Loan Service Programs, the County Supervisor must make the calculations required in this section.

(1) The County Supervisor will determine the net recovery to the Federal Government equivalent to involuntary liquidation of the collateral securing the FmHA debt in accordance with Exhibit J, "Debt and Loan Restructuring System," and will follow the guidance provided by State supplements and Exhibit I, "Guidance for Determining Adjustments for Net Recovery Value of Collateral." The County Supervisor will determine the current market value of the collateral including tangible and intangible property in existence and of record in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1) for real estate property, and on Form FmHA 440-21, "Appraisal of Chattel Property (available in any FmHA office)." Collateral may include real estate, chattels, and tangible or intangible property. Chattels include machinery, equipment, livestock, growing crops, and crops in storage. Tangible or intangible property may include accounts receivable, Government Payments. From the current market value of the collateral, the following adjustments will be made:

(i) Subtract the amount which would be required to pay prior liens on the collateral property;

(ii) Subtract taxes and assessments, depreciation, management costs, and interest cost to the Government based on the 90-day Treasury Bills (published in Exhibit B of FmHA Instruction 440.1, available in any FmHA office). Taxes and assessments, depreciation, management costs, as well as interest costs will be calculated on the current market value of the property for the average inventory holding period. The holding period for suitable inventory farm property, will be established by each State as of July 1 each year.

(iii) Adjust the current market value for estimated increases or decreases in value of the property for the holding period specified in paragraph (f)(2) of this section.

(iv) Subtract resale expenses, such as repairs, commissions, and advertising;

(v) Other administrative and attorney's expenses; and

(vi) Add income which will be received after acquisition.

(2) Determining costs of involuntary liquidation of collateral for farm loans. The State Directors will analyze the costs of involuntary liquidation within the geographic areas of their jurisdiction and issue a State supplement of estimated costs and

average holding time to be used as guidelines by County Supervisors in making calculations of net recovery value under this subsection. Exhibit I, "Net Recovery Value Determination," will be used in establishing the guidelines contained in the State supplement. Such costs analyses will be carried out in July of each year. State Directors will consult with State Directors of adjoining States, other lenders, real estate agents, auctioneers, and others in the community to gather and analyze the information specified in this subpart.

(g) Determining net recovery value resulting from primary servicing. The value of the restructured debt will be based on the present value of payments the borrower would make to the FmHA using any combination of primary loan service programs that will provide a feasible plan. Present value is a calculation concept which assigns a lower current value to dollars received in later years than to dollars received at the present time. County Supervisors will use a discount rate based on 90-day Treasury Bills as of the date the borrower files the application for restructuring. The National Office will publish the 90-day Treasury Bil rate in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(h) Notification requirements.

(1) If the calculations show that the value of the restructured debt is greater than or equal to the net recovery value of the collateral securing the debt, the County Supervisor will forward to the State Director the borrower's Farm and Home Plan and the original printout of the DALR$ calculations. The County Supervisor will certify that the borrower meets all requirements for debt restructuring with the write-down amount specified on the printout. The State Director's authorization to the County Supervisor to proceed with the write-down will be evidenced by the State Director's signature affixed to the original copy of the DALR$ printout returned to the County Supervisor. Within 60 days after receiving a complete application the County Supervisor will notify the borrower of the results of the calculations by sending Exhibit F of this subpart, certified mail, return receipt requested and offer to restructure the debt. A printout of the DALR$ calculations will be attached to Exhibit F, "Notifications of Approval Offer to Debt Restructure." Exhibit F will inform the borrower(s) of FmHA's offer to restructure the debt. If the borrower accepts the offer, within 45 days of the borrowers receipt of Exhibit F, the County Supervisor will restructure the debt within 45 days after receipt of the written notice of the borrower's acceptance of FmHA's offer to restructure the debt. If the borrower, both accelerated and non

accelerated, do not respond to Exhibit F within 45 days, or declines FmHA's offer to restructure the debt, the County Supervisor will send Attachments 9 and 10 of Exhibit A of this subpart. If Attachment 10 is not returned within 30 days of the borrower's receipt of the attachments, the account will be accelerated or foreclosed in accordance with §1955.15 of subpart A of Part 1955 of this chapter.

(2) If the borrower previously returned Attachment 2 or 4 to Exhibit A of this subpart within 45 days, requesting a Farm Debt Restructure and Conservation Set-Aside Easement Program, by submitting an ASCS photo of the farm showing the portion of the farm and approximate acres to be considered in their request, the County Supervisor will proceed with processing the request for debt relief. The request will be processed as set forth in Exhibit H of this subpart.

(3) If the DALR$ calculations indicate a feasible plan of operation cannot be developed considering all Primary Loan Service Programs, Softwood Timber, or Conservation Set-Aside Easement Programs, the County Supervisor will take the following actions within 15 days from the date of the determination that the borrower's debt cannot be restructured as requested.

(i) When the borrower has creditors other than FmHA, and a feasible plan of operation cannot be developed after consideration of Primary Loan Service, Softwood Timber and Farm Debt Restructure and Conservation Set-Aside Easement Programs, the borrower will be sent Exhibit E, "Notification of Request for Mediation or Meetings of Creditors," of this subpart, certified mail, return receipt requested. A printout of the DALR$ calculations will be attached to Exhibit E. Exhibit E will inform the borrower that FmHA is requesting mediation or a meeting with the borrower's undersecured creditors holding a substantial portion of the borrowers debt, in an effort to obtain a debt adjustment agreement with such creditors which may permit the development of a feasible plan of operation. If the borrower does not respond to Exhibit E within 30 days (a response is only required in States without a certified mediation program), the County Supervisor will send Attachments 5 and 6 of Exhibit A of this subpart, certified mail, return receipt requested.

(ii) If mediation or the voluntary meeting of creditors is not successful, the borrower will be sent Attachments 5 and 6 of Exhibit A of this subpart, certified mail, return receipt requested, within 15 days of the unsuccessful mediation or meeting. The DALR$ computer printout will be attached to Attachment 5 of Exhibit A. Attachment 5 of Exhibit A will inform the borrower of further rights. This section also applies to borrowers whose accounts were accelerated between November 1, 1985, and May 7, 1987, and other accelerated borrowers whose accounts have not been foreclosed or liquidated.

(iii) As stated in Attachment 5, the borrower will have 45 days after the receipt of the notification of ineligibility to purchase the security property at net recovery value, provided the value of the restructured loan is less than the recovery value. FmHA will not provide credit for this transaction.

(iv) Prior to the buy out at net recovery value, the borrower must, as a condition of the sale, enter into written agreement by executing Exhibit C, "Net Recovery Buyout Recapture Agreement," of this subpart. The County Supervisor will process the net recovery buyout payment and will input the information to establish the recapture receivable account via the multi-function workstation. A new mortgage or deed of trust will be taken for the best lien obtainable. The new mortgage or deed of trust will describe Exhibit C and enter the amount due under the net recovery buyout recapture agreement. The new mortgage or deed of trust will secure repayment of the net recovery buyout recapture agreement. The old mortgage or deed of trust will be released in accordance with §1951.909 (k) of this subpart.

(i) Administrative appeals.

(1) If the borrower appeals the decision to deny Primary Loan Service Programs, the 45 day period for the borrower to pay FmHA net recovery value of the collateral will start on the day the borrower receives the final appeal or review upholding the initial decision. Such decision letter will be sent to the borrower by the Hearing Officer or Review Officer certified mail, return receipt requested. The return receipt is to be sent to the address of the County Office by the Hearing and/or Review officers.

(2) If the administrative appeal process results in a determination that the borrower is eligible for debt write-down, the County Supervisor will write-down the loan in accordance with this subpart, taking into consideration the write-down recommendations, if any, of the Appeal Officer. If the administrative appeal process results in a determination that the borrower is ineligible for debt write-down, the borrower will be sent Exhibit K and Attachment 1 of Exhibit K, advising the borrower of FmHA's intent to continue processing the application for Preservation Loan Service Programs as set forth in §1951.911 of this subpart. If the borrower does not return Attachment 1 of Exhibit K within 15 days of the date that Exhibit K

is sent, the County Supervisor will continue to process the borrower preservation loan service request in accordance with §1951.911(a)(5) of this subpart. The account will not be accelerated or foreclosure will not continue, until the borrower has the opportunity to appeal any denial of the Preservation Loan Service request. If the borrower returns Attachment 1 of Exhibit K within 15 days of the date Exhibit K is sent, the account will be accelerated or foreclosure will proceed in accordance with §1955.15 of Subpart A of Part 1955 of this chapter. When the account is accelerated the borrower will not be considered for further loan assistance under §1941.14 of Subpart A of Part 1941 of this chapter.

(3) If the borrower appeals the current market appraisal completed by FmHA, the borrower may obtain an appraisal by an independent appraiser selected from a list provided by FmHA in accordance with §1900.57 (1) of Subpart B of Part 1900 of this chapter. The borrower does not have to exclusively appeal the current market appraisal in order to be entitled to the independent appraisal, but simply must appeal the denial of Primary Loan Service Programs in which the appraisal, as part of the net recovery value calculation, is relevant. The cost of the appraisal must be paid by the borrower. The independent appraisal will be considered by the appeal officer. The independent appraiser must meet at least one of the following qualifications as determined by the FmHA County Supervisor:

(i) Certification by a National or State Appraisal Society.

(ii) If a certified appraiser is not available the appraiser may be one who meets the criteria for certification in a National or State appraisal society.

(iii) The appraiser has recent, relevant documented appraisal experience or training, or other factors clearly establishing the appraisers qualifications.

(j) Processing of write-down. Borrowers who are eligible for Primary Loan Service Programs with write-down will have their loans rescheduled or reamortized in accordance with this subpart. All loan servicing actions approved in connection with the write-down must take place simultaneously. The borrower and County Supervisor will complete Exhibit D to this subpart, "Shared Appreciation Agreement." Exhibit D provides for recapture as specified in §1951.914 of this subpart of a portion of any appreciation in the value of the real property securing the debt remaining after the write-down. The FmHA DALR$ computer program will be used to determine the notes to be written down.

(1) A separate Form FmHA 1940-17, "Promissory Note," will be used for each note or assumption agreement being reamortized.

(2) A Form FmHA 1940-17 will be completed, signed, and distributed as provided in the FMI.

(3) The loan servicing action date of approval is also the date that will be inserted on the rescheduled or reamortized Form FmHA 1940-17 and on Exhibit B of this subpart, "Noncash Credit for Farmer Program Loans When Establishing Recapture Receivable."

(4) A Form FmHA 1940-17 may be processed provided the County Office has possession of the original note being reamortized. If the County Office does not have possession of the original note, the County Supervisor will ask the FmHA Finance Office to return the original note so it is in the County Office before Form FmHA 1940-17 is processed.

(5) The County Supervisor will complete Form FmHA 1965-22, "Information on Assumption on New Terms or Other Change of Terms," Form FmHA 1965-23, "Supplemental Information on Assumption and/or Change of Terms," and Exhibit D of this subpart in accordance with the provisions of the forms manual insert.

(6) The original (old) note(s) will be marked "Rescheduled or Reamortized with Writedown Debt" and stapled to the new rescheduled or reamortized promissory note(s) and will be filed in the promissory note file in the operation file. Copies for the borrower(s) case file should be marked and stapled the same and filed in position 2 of the case file. If a transfer is involved, assumption agreement(s) will be marked and stapled with the note(s) and copies will be filed as indicated above.

(k) Real estate liens. If the write-down of the borrower's real estate debt results in all debts to FmHA being written down, FmHA real estate liens will be maintained and will not be subordinated to increase the amount of the prior liens during the shared appreciation period. Shared appreciation agreements will be serviced in accordance with §1951.914 of this subpart. Upon payment by the borrower of net recovery in a buy out, the original mortgage or deed of trust will be released on real estate for the FmHA loans bought out. The notes will be marked "satisfied at net recovery value" and returned to the debtor or the debtor's legal representative. Net recovery buyout recapture agreements will be serviced in accordance with §1951.913 of this subpart.

(l) Non real estate liens. If a borrower does not own any real estate there will be no recapture and the borrower will not be required to enter into a recapture agreement. Upon payment by the borrower of Net Recovery Value in a buy out, the original security instruments will be released on chattel security for the FmHA loans bought out. The notes will be marked "satisfied at net recovery value" and returned to the debtor or the debtor's legal representative.

Note to County Supervisor:

This attachment will be provided to every borrower who requests Primary and/or Preservation Loan Servicing Programs and to every borrower FmHA contacts in regard to either monetary or non-monetary default.

See §1951.907(a),(b),(c),(d),(e),(f) and (g).

PRIMARY AND PRESERVATION LOAN SERVICE PROGRAMS PURPOSE

Purpose

These loan service programs are to help you repay the loan and keep your farm property. This notice tells you:

1) How to get more information
2) How to apply
3) Your appeal rights if you apply and are turned down

How to Get More Information

Ask at any county FmHA office for copies of the FmHA rules describing these programs. These rules must be given to you within 10 days.

Who Can Apply?

All "farmer program borrowers" who have one of the following loans:

Operating (OL)
Farm Ownership (FO)
Emergency (EM)
Economic Emergency (EE)
Soil and Water (SW)
Recreation
Special Livestock
Rural Housing Loans made for farm service buildings
Economic Opportunity

You May Need Help in Applying.

The legal requirements for these programs are very complicated. You may need help to understand them. You may want to ask an attorney to help you. If you cannot get an attorney, there are organizations that give free or low-cost advice to farmers. Ask your State Department of Agriculture or the USDA Extension what services are available in your state.

NOTE FmHA County Supervisors cannot recommend a particular attorney or organization.

I. Primary Loan Service Programs

1) Loan Consolidation

Two or more of the same type of loans can be combined into one larger loan. For example, operating loans can only be joined with operating loans and farm ownership loans with farm ownership loans.

2) Loan Rescheduling

The payment schedule can be altered to give you longer to repay loans secured by equipment, livestock, or crops. For example, the time for repayment of an operating-type loan can be extended up to 15 years. When a loan is rescheduled, the interest rate may be reduced.

3) Loan Reamortization

The payment schedule can be changed to give you longer to repay loans secured by real estate. For example, a Farm Ownership loan payback period may be extended to 40 years from the date the original loan was signed. When a loan is reamortized, the interest rate may be reduced.

4) Interest Rate Reduction

Regular Interest Rate

FmHA has specific interest rates for each type of loan. These interest rates change quite often. They depend on what it costs the government to borrow money. Each type of loan will have a regular rate.

Limited Resource Interest Rate

If you have an operating loan (OL) or a farm ownership (FO) loan, it may be possible for you to get "limited resource loan interest rate." For OL loans, the limited resource loan rate is 3 percent below the regular rate. For farm ownership loans, the limited resource loan rate is between 5 percent and an amount that depends on what it costs the government to borrow money.

Interest Rate for Loan Servicing

When loans are consolidated, rescheduled, or reamortized, the interest rate on the new loan will be either the interest rate on the original loan or the current regular rate of interest for the type of loan, whichever is less. The borrower may be able to get the limited resource interest rate on OL or FO loans.

For information about current interest rates, contact the county FmHA office.

5) Loan Deferral

Payments of principal and interest can be temporarily delayed for up to 5 years. You must show that you cannot pay essential living expenses or maintain your property and pay your debts. You must also show you will be able to pay at the end of the delay period.

The interest rate on a deferral loan will be either the current rate of interest for loans of the same type or the original rate on the loan, whichever one is lower.

The interest that builds up during the delay period will not be added to the principal of the loan. You must pay this interest in equal yearly payments for the rest of the loan term.

NOTE: You can only get a loan deferral if the FmHA decides options 1-4 will not work for you.

NOTE: FmHA Softwood Timber Programs. Marginal land including highly erodible land and pasture can be planted in softwood timber. If you qualify, a debt of up to $1000 an acre can be deferred up to 45 years. Interest will be charged during the deferral period. The debt must be paid when the timber is sold.

NOTE: Conservation Easements. Use of highly erodible land, wetlands, or wildlife habitat can be signed over to the Secretary of Agriculture. The Secretary will reduce the debt by the value of the land or by the difference between the value of the land and the amount you owe, whichever is larger. The amount of land left after the set aside must be enough to continue the farming operation.

6) **Debt Write-Down**

This means the debt you owe is reduced. FmHA can reduce both the principal and interest of the debt. The debt can be reduced to the recovery value of the property mortgaged to FmHA to get the loan. This property is called collateral. The recovery value is the value of the collateral minus all of the attorney, management, resale, and other expenses FmHA would have if they foreclosed on and sold the collateral. These expenses include payments on other loans against the collateral that FmHA would have to pay if it foreclosed and sold the collateral. The value of the collateral must be decided by a qualified appraiser.

In order to get debt write-down, you must show that you will have enough money to pay all of your family living and farming operating expenses and scheduled debt payments. This includes making payment on the FmHA loan once part of the loan is written down. This means you must show that you have a feasible plan of operation. FmHA will never write down more of the debt than is necessary for you to show a feasible plan.

The write-down is used only when the loan servicing programs listed in programs 1-5 above alone will not be enough for you to show a feasible plan. If you get loan servicing, some of the principal and interest on your loan(s) will be written down in addition to changing the payback period, and possibly the interest rate, using programs 1-5 above.

II. Who Can Qualify for Primary Loan Service Programs

To qualify you must prove that:

1) You cannot repay your FmHA debt due to circumstances beyond your control. This means that you have had less money than expected due to such things as:
   a) A natural disaster, weather, or insect problems,
   b) Family illness or injury,
   c) Loss or reduction of off-farm income,
   d) Disease in your livestock,
   e) Low commodity prices and high operating expenses in your local area, or
   f) Other circumstances beyond your control; *and*
2) You have honestly acted in "good faith" and tried to keep your agreements with FmHA in that you have kept agreements for the use of proceeds and release of property used to secure the loan, and your file shows no fraud, waste, or conversion.

Who Will Decide If You Qualify?

The FmHA County Supervisor will decide if you qualify. The County Supervisor will decide whether you can pay as much or more on the loan as FmHA would get if they foreclosed and sold the collateral for the loan. To do this, the County Supervisor must decide whether you can pay at least as much as the "recovery value" explained above.

How Soon Will You Know?

Within 60 days from the day you apply you will get a copy of the County Supervisor's analysis and decision.

Can You Get Your Debts Written Down?

Only if FmHA will get as much or more by writing down part of your debt than it will get if it forecloses and sells the collateral for the loan.

Conditions of the New Agreement If Your Qualify

You must sign a shared application agreement. The agreement asks you to:

- Repay a part of the sum written down.
- The amount depends on how much your real estate collateral increases in value.
- The shared appreciation agreement will not last longer than 10 years.

During this 10 years, FmHA will ask you to repay part of the debt it wrote down if you do one of the following things:

1) Sell or convey the real estate
2) Stop farming
3) Pay off the entire debt

If you do not do one of these things during the 10 years, FmHA will ask you to repay part of the debt written down at the end of the 10 years.

FmHA can only ask you to repay if the value of your real estate collateral goes up.

In the first four years of the agreement, FmHA will ask you to pay 75 percent of the increase in value of the real estate. In the last 6 years, it will ask you to pay only 50 percent of the increase in value. However, FmHA can never ask you to pay more than the amount of the debt they wrote down.

Mediation of Other Loans

If you cannot show a feasible farm plan because you owe too much to other creditors and suppliers, FmHA will help you try to get your other creditors to adjust your debts. This will be done by FmHA asking for mediation if your state has a mediation program approved by the Department of Agriculture. If there is no state mediation program, FmHA will try to set up a meeting with your other creditors and suppliers.

Date to Begin Agreement

If you are found eligible, you will be informed of the date for an appointment so your debt can be adjusted. **You must notify FmHA that you accept its offer to restructure your debt within 45 days of when you receive the offer.**

III. Preservation Loan Service Programs

Purpose

These programs apply when the primary loan service programs cannot help you.

Programs Available

1) **Homestead Protection.** (Keeping your farm home.) You may keep or purchase or lease your farm home and outbuildings plus a limited amount of land. The limit on the land you can retain is up to 10 acres. The lease time will be for up to 5 years. The lease will include an option to buy back the property you lease.
2) **Farmland Leaseback/Buyback.** You can either lease the entire farm back or buy it back from FmHA.

IV. Who Can Qualify for Homestead Protection?

1) Your gross annual income from your farm and/or ranch must be similar to other comparable operations your size in your area. This must be true for at least 2 years of the last 6 years.

2) Sixty percent (60%) of your gross annual income in at least 2 of the last 6 years must have come from the farming operation.

3) You must have lived in your homestead property for the 6 years immediately before your application. This rule can be waived if you had to leave for less than 12 months *and* you had no control over the circumstances.

4) If FmHA has already taken your property, you must apply within 90 days of the date FmHA took your property. (FmHA must notify you within 30 days of taking your property).

How to Lease Your Dwelling

1) You may lease your home and up to 10 acres if you pay FmHA reasonable rent. The rent prices FmHA charges you must be similar to comparable property in your area.
2) You must maintain the property in good condition.
3) You may lease for up to 5 years.
4) You cannot sublease your property.
5) If you do not keep up your rental payments to FmHA, FmHA will evict you and force you to leave. Before FmHA forces you to leave, they must let you appeal. FmHA must also follow the laws of your state.

NOTE: You can buy back your property at current market value at any time during the lease. Current market value will be decided by an independent appraiser. The appraisal will be made within 6 months of your application for homestead protection.

V. How to Lease Back or Buy Back Farmland Property

Under certain conditions you may lease or buy back your entire farm. You can apply for the lease-back or buyback before FmHA gets title to your land, and you can apply after FmHA takes title.

How Long Do I Have to Decide?

If FmHA takes your farmland, you will have 180 days after FmHA takes it to apply to purchase or lease your property. (Some states give you a longer time period.)

Who Can Apply to Buy or Lease Back?

1) Buyback or leaseback rights apply to you, your spouse, or your children if they also have been actively involved in farming.
2) Members of family-held corporations if the corporation had the loan from FmHA.
3) Members of partnerships or joint operations who were responsible to pay the FmHA loan.

NOTE: You must notify your family of their right to lease or buy back. Your spouse and your children's rights exist only if FmHA takes the property into inventory.

Order of Rights to Buy or Lease Back.

1) The former owner has first right. His/her right to be considered will last for 180 days from the time FmHA gets title to the land.
2) The owner's spouse or children or stockholders in family farm corporations. Their right to be considered will last for 10 days after the owner's ends.
3) The operator, if he/she is not owner of the property and was operating the property when FmHA took it into inventory.
4) Operators of family-size farms.

NOTE: If the land is on an Indian reservation and was owned by a tribe member, FmHA will make special offers to tribal members. FmHA will do this after the time period for owner/operator buyback has passed.

Who Can Qualify for Buybacks Financed by FmHA or Leasebacks?

1) You must have enough financial and management skills to show you will be successful in the farming operation.

NOTE: If you get financing from someone other than FmHA, you do not need management skills.

2) You must give FmHA a farm plan that shows you have a reasonable chance of being successful.
3) The rent price must be based on reasonable rent for the same type of property in your area.
4) The purchase price for the farmland must not be more than a price that reflects the amount of money you can make from the land by farming it. FmHA calls this the capitalization value.

VI. How to Apply for Primary and Preservation Loan Servicing

Forms to apply to primary and preservation programs

These forms should be included with this notice. If they are not, you can get these from your county office or as directed below.

	Form number	Title
1)	FmHA 410-1	Application for FmHA Services (The financial statement on this form must include information no more than 90 days old. The financial statement must be for all individuals, corporations, or partnerships personally liable for the FmHA debt.)
2)	FmHA 410-8	Application Reference Letters
3)	FmHA 410-9	Statement Regarding Privacy Act
4)	FmHA 431-2	Farm and Home Plan
5)	FmHA 440-32	Request for Statement of Debts and Collateral
6)	FmHA 1910-5	Request for Verification of Employment
7)	FmHA 1924-1	Development Plan (if you are planning to make major changes in your farming operation)
8)	SCS-CPA-26	Highly Erodible Land and Wetland Conservation Certification (This form is included but must be completed in a Soil Conservation Service office.)
9)	Ad 1026	Highly Erodible Land and Wetland Conservation Certification (This form is included but must be completed in a Soil Conservation Service office.)

NOTE: For Homestead Protection only, obtain the Agricultural Stabilization and Conservation Service or Soil Conservation Service photo of the farm. Show the homestead site you wish to apply for.

NOTE: For Conservation Easement only, get the Agricultural Stabilization and Conservation Service or Soil Conservation Service photo of your farm. Show approximate number of acres you wish to use for a conservation easement.

Time to Apply

You must complete all of these forms and get them to the FmHA office within 45 days from the date you received this notice. FmHA will not consider you for the loan service programs until it gets all of these completed forms.

VII. What Happens When You Are Not Eligible for Primary Loan Service Programs?

If the County Supervisor decides you are not eligible, you may request a meeting with the County Supervisor so he/she can explain the decision. If you think the County Supervisor's decision is wrong, you can tell him/her why. If you can make the necessary changes to your Farm and Home Plan to show a feasible plan, you should show these changes to the County Supervisor.

You Have the Right to Appeal.

1) **Appeal Hearing.** If you do not convince the County Supervisor that you should get primary loan servicing, you have a right to appeal the decision. The County Supervisor must send you a letter after the meeting that explains his/her decision. The letter must also say you have 30 days to ask for an appeal hearing. You can present witnesses and documents and ask FmHA questions at the hearing. The appeal hearing is recorded, you can get a copy of the transcript of the hearing if you pay for the copying costs.
2) **Review.** If you do not win at the appeal hearing, FmHA must tell you why and let you ask for a review of that decision. The transcript and the documents used at the hearing will be reviewed when you ask for a review of the appeal hearing decision.
3) **Independent Appraisal.** You may ask for an independent appraisal of your property in which FmHA has a security interest. This independent appraisal may be important if you think FmHA has put too high or too low a value on your property when it considered you for primary loan servicing. You will have to pay for this appraisal. FmHA will give you three names of appraisers. You must choose one of the three to do the independent appraisal.

You May Pay Off Your Loan at the "Recovery Value."

1) **Recovery Value.** If the analysis of your debt shows that you cannot "cash flow" even if your debt to FmHA is reduced to the net recovery value of the collateral, the County Supervisor will send you a letter saying you can pay off the loan by paying the "recovery value" of the land and property used to secure the loan. The letter will tell you the "recovery value."

   The "recovery value" is figured by subtracting from the fair market value of the collateral property all expenses FmHA would have to pay if it foreclosed and sold your property. These expenses include payig off other creditors who have an earlier security interest in the collateral, attorneys fees, administrative and management expenses, and taxes.
2) **Time Limit.** If you want to pay off the loan at "recovery value," you must pay FmHA within 45 days of the date your receive the letter. If you appeal, the County Supervisor's decision not to give you primary loan servicing, this 45 days will not start until all of the appeals end.

3) **Cash.** If you pay off the loan, you must pay in cash.

Consideration for Preservation Loan Service Programs.

You will be considered for preservation loan service programs if:

1) You do not appeal or do not win your appeal, and
2) You do not pay off the loan at recovery value.

FmHA will consider you for preservation loan service programs after the 45-day time period you have to pay off the loan at recovery value.

Consideration for homestead protection and/or farmland leaseback/buyback. You will be considered for preservation loan service programs if you:

1) Meet the conditions described above, and
2) Agree to give FmHA title to your land at the time FmHA signs the written dwelling retention and or farmland leaseback/buyback agreement with you. The written agreement will include the amount you must pay for rent, the number of years you can rent, and an option to buy.

FmHA may consider you for homestead protection and farmland leaseback/buyback on your real estate and, at the same time consider you for buyback of your equipment and any other non-real estate collateral at market value.

VIII. What Happens When You Are Turned Down for Preservation Loan Service Programs?

You Can Appeal.

If FmHA decides that you cannot get homestead protection and or farmland leaseback/buyback, you can ask for:

1) A meeting with FmHA to discuss the decision, and
2) An appeal hearing.

The Right to a Meeting

The County Supervisor will send you a letter telling you why FmHA decided not to give you homestead protection or farmland leaseback/buyback. That letter will give you 15 days to ask for a meeting with FmHA.

The Right to an Appeal Hearing

If you do not convince FmHA at the meeting to give them to you, FmHA will send you another letter giving you 30 days to request an appeal hearing.

At the appeal hearing, you can contest FmHA's rental price and its decision not to give you homestead protection and/or farmland leaseback/buyback.

The Right to a Review

If you do not win the appeal hearing, FmHA must let you ask for a further review. The recorded transcript of the hearing will be reviewed at this stage. You can get a copy of the transcript by paying the copying costs.

IX. What Happens If You Do Not Win the Appeal for Preservation Loan Service Programs?

FmHA will accelerate your loan account and call in the whole debt. They will stop allowing you to use any of your crop, livestock, and milk checks on which they have a claim to pay for living and operating expenses. They will also repossess the collateral or start legal foreclosure or liquidation proceedings to take and sell the collateral, including your equipment, livestock, crops, and land. After acceleration FmHA may also take money by administrative offset, that is, money which other Federal Government agencies owe you.

FmHA will take this action unless you do one of the following things:

1) Sell all the collateral for the loan at market value
2) Convey (legally transfer) the collateral to FmHA
3) Apply to transfer the collateral to someone else and have that person assume all or part of the FmHA debt. (This is called transfer and assumption.)

If any of these options result in payment of less than you owe, you can apply for a debt settlement so that you will no longer be personally liable for your FmHA debt. You may re-apply for homestead protection and farmland leaseback/buyback if FmHA takes your land or home. You may re-apply for these programs, even if you applied before and did not get one of these programs and were not successful on appeal.

o0o

Note to County Supervisor:

This attachment will be provided to every borrower who reqests, Primary and/or Preservation Loan Servicing Programs and to every borrower FmHA contacts in regard to monetary default.

See §1951.907(a),(b),(c),(d) and (f).

FmHA Instruction 1951-S
Exhibit A to Subpart S
Attachment 2

Acknowledgement of Notice of Program Availability

I/We have been given a notice explaining the primary loan service programs and the preservation loan service programs.

The date on the notice was ____________________.

This notice explained that FmHA programs are available to help me keep my property.

I/We ask FmHA to consider me/us for all of these programs.

I understand that I will be notified of my rights to appeal after FmHA decides on my request.

______________________________	______________________
Signature	Date

o0o

Note to County Supervisor:

This attachment is used when notifying borrower who returned attachement 2 of Exhibit A, that FmHA cannot provide the assistance requested with the Primary Services Programs.

See §1951.909(h)(3)(i) and (ii).

FmHA Instruction 1951-S
Exhibit A to Subpart S
Attachment 5
Page 1

Notice of Intent to Accelerate or to Continue Acceleration and Notice of Borrowers' Rights

Name and Address

Dear (Borrower's Name):

You are not eligible for debt restructuring.

I. ☐ FmHA has reviewed your application for primary loan servicing (debt restructuring).

You cannot get primary loan servicing because your Farm and Home Plan **does not** show you can pay all your family living expenses, farm operating expenses, and scheduled debt repayments even with FmHA help.

To get primary loan servicing, your Farm and Home Plan must show you can pay FmHA at least
$ ____________________ per year.

NOTE: The attached computer printout which summarizes FmHA's calculations based on your application.

II. ☐ FmHA has reviewed your application and your case file. You have broken your agreement with FmHA. Your Farm and Home Plan shows you **can** pay all of your family living expenses, farm operating expenses, and scheduled debt payments if FmHA uses primary loan servicing, softwood timber, and conservation easement programs to restructure your loans.

But you have broken your loan agreements with FmHA.

You have broken loan agreements with FmHA in the following way:

☐ **You are $ ____________________ behind in your scheduled loan payments.**

☐ **You have sold or gotten rid of property you used to secure the FmHA loan without proper approval from FmHA. This property is ____**
____.
(Describe property.)

☐ **You have stopped farming or ranching.**

☐ **You have ____**
____.

FmHA Instruction 1951-S
Exhibit A to Subpart S
Attachment 5
Page 2

III. FmHA Intends to Foreclose

FmHA will accelerate your loan because you are not eligible for primary loan servicing.

FmHA will take legal action to collect the money you owe.

FmHA may:

1) Repossess and sell your equipment, crops, livestock, livestock products, and other personal property used to secure your FmHA loan;
2) Foreclose and sell your real estate mortgaged to FmHA;
3) Stop any release of money from the sale of crops, livestock, livestock products, or other property you need to live and operate your farm;
4) Take by administrative offset any money you are owed by Federal agencies;
5) File lawsuits to collect money you owe to FmHA.

IV. WHAT YOU CAN DO TO STOP FORECLOSURE

Before FmHA can take action against you, you can;

1) **Request a meeting with the FmHA county official.**

   If you disagree with FmHA's decision that you broke your loan agreement or the decision not to give you debt restructuring, you should request a meeting with the county FmHA official. The county official can explain the FmHA decision. You can also present changes in your Farm and Home Plan which may show that you can make the amount of payment listed above in Section I.

   To ask for this meeting, check the box #1 on the "Response Form: (Attachment 6).

   Time limit: You must return the "Response Form" to the county FmHA office **within 15 days** from the date you get this letter. You should also call the county office to set up the meeting.

2) **Request an Appeal Hearing.**

   You may also request an appeal hearing to contest FmHA's decision. At the hearing you may challenge the ways FmHA says you broke your loan agreements. You may also challenge FmHA's decision that you cannot present a feasible Farm and Home Plan for primary loan servicing if your notice states FmHA believes you cannot present a feasible plan.

   You can appear at the appeal hearing and present witnesses and documents to support your position.

You may also ask for an independent appraisal of your property used to secure the FmHA loan. This independent appraisal may be important if you think FmHA has put too high or too low a value on your property when it considered you for primary loan servicing. You will have to pay for this appraisal. FmHA will give you three names of appraisers to choose from. Check box #3 on the "Response Form" if you want the independent appraisal.

If you request a meeting with the FmHA county official, you will be given a chance to appeal after that meeting.

If you do not want to request the meeting but do want to appeal, you must say so on the enclosed "Response Form."

You may request both the meeting and the appeal hearing on the "Response Form." Check box #2 on the "Response Form" to request an appeal hearing. If you ask for just the appeal hearing, you must return the "Response Form" to FmHA within 30 days of the date you received the letter.

3) Buy Out the Loan at Recovery Value.

You have this option only if the recovery value is greater than the value of the restructured loan.

[1]You [may] or [may not] buy out your FmHA loan(s) at the "recovery value" of the property securing the loan. The recovery value is $ __________________ . The restructured loan(s) value is $ __________________ .

NOTE: The attached computer printout which summarizes FmHA's calculations.

If you are eligible and pay the recovery value, FmHA will write off the rest of your debt.
If you are eligible to pay the recovery value, FmHA will require you to sign a **recapture agreement.** This agreement would allow FmHA to require you to pay the difference between the recovery value and the current market value of your real estate securing the loan if you sell it within 2 years of the agreement. FmHA can never recapture more than it wrote off.

Time Limit. If you are eligible and want to buy out your loan(s) at the recovery value, **you must pay FmHA within 45 days** from the date you received this letter. You must pay FmHA in cash, money order, or certified check.

If you appeal FmHA's decision, the 45-day period to buy out at recovery value will not start until all of the appeals are completed. Check box #4 on the "Response Form" if you want to buy out at recovery value.

4) Consideration for Homestead Protection and Farmland Leaseback/Buyback.

If you do not appeal, or if you do not win your appeal and you do not buy out the loan at recovery value, FmHA will automatically consider you for Homestead protection and farmland leaseback/buyback. [You applied for these programs when you applied for primary loan servicing (debt restructuring).] FmHA will notify you that it will be considering you for these programs and will request some additional information when the time comes to consider you.

Note to County Supervisor,
[illegible]
[1] Circle appropriate entry.

V. WHAT HAPPENS IF YOU DO NOT RESPOND?

If you do not respond to this letter by completing and returning the enclosed Attachment 6, "Response to Notice of Intent to Accelerate or Continue with Acceleration and Notice of Borrowers' Rights," FmHA will accelerate or continue with acceleration of your FmHA debts. This is very severe action FmHA will take any of the actions listed in Section III above to collect on your debt.

The Right Not to Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract).

You cannot be denied a loan because all or part of your income is from a public assistance program.

You cannot be denied a loan because ~~you exercised~~ your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

County Supervisor
Farmers Home Administration
United States Department of Agriculture

o0o

Note to County Supervisor:

This attachment will always be sent with Attachment 5.

See §1951.909(h)(3)(i) and (ii).

FmHA Instruction 1951-S
Exhibit A to Subpart S
Attachment 6

Response to Notice Informing Me of FmHA's Intent to Accelerate or Continue With Acceleration and Notice of My Rights

TO: County Supervisor, Farmers Home Administration

FROM: ____
(Please print your name and address.)

I have read the notice informing me of FmHA's intent to accelerate or continue with acceleration my loan which I received with this response form.

I want to:

[Check appropriate box or boxes.]

☐ 1) **Request a meeting with the FmHA county official.**

My current telephone number is ____________ .

I understand that I do not lose my appeal rights by asking for this meeting.

☐ 2) **Request an appeal hearing.**

I understand that I will be contacted by FmHA's National Appeals Staff to set up the appeal hearing date and to give me more information.

☐ 3) **Request that an independent appraisal of my property that secures the FmHA loan(s).**

I understand that I must pay for this appraisal. I understand that the appeal hearing officer will give me the names of three appraisers, from which I must choose one.

☐ 4) **Buy out my loan(s) at the recovery value.**

I understand that I must pay FmHA $ ________________ in cash, certified check, or money order. I understand that I must pay this to FmHA within 45 days of the date I received this letter or, if I appeal, I must pay within 45 days from the end of the appeal. I understand that if I pay this amount FmHA will write off the rest of my debt.

______________________________ ______________________

Borrower's signature Date

o0o

Note to County Supervisor:

This attachment will be sent to borrowers who are 180 days delinquent, whose accounts have not been accelerated, WHO DID NOT return attachment 2 of Exhibit A.

See §1951.907(h)(2).

FmHA Instruction 1951-S
Exhibit A to Subpart S
Attachment 9
Page 1

Notification of Intent to Accelerate or Continue Acceleration of Loans and Notice of Your Rights

FmHA will accelerate your loan because you have not asked for primary loan service programs or debt restructuring.

You can:

1) Ask for a meeting with your County Official.
2) Appeal FmHA's decision.
3) Ask to voluntarily sign over to FmHA the property used to secure your loan and ask to be released from your debt.
4) Apply for a leaseback or buyback of your farm real estate once FmHA has taken it.
5) Ask to keep your home after the FmHA has taken it.

Dear (Borrower's Name):

You are behind with your payments to FmHA, and a review of your account shows:

☐ You are $ __________________ behind in your FmHA loan payments.

This is a violation of your loan agreement.

☐ You have sold or gotten rid of property you used to secure your FmHA loan. You did not get written approval for this.

The property is ____

____.

(Describe property.)

☐ You have stopped farming or ranching.

This is a violation of your loan agreement.

☐ You have ____

____.

(Insert reason for proposed action.)

FmHA Will Accelerate Your Loans.

This means FmHA will take legal action to collect the money you owe. They will foreclose on real estate and other property used to secure your loans. They may also stop the release of money from the sale of crops or other property. They may take by administrative offset any money you are owed by other Federal agencies.

Steps You Can Take Before FmHA Accelerates or Continues Acceleration of Your Loans.

1) **Right to a meeting.** You have the right to meet with your FmHA County Official before they decide to accelerate or continue acceleration of your loan. You must check the box on Attachment 10 saying you want a meeting. [Attachment 10 is the "Response to Notice of Intent to Accelerate or Continue Acceleration of My Loan."]

   How Soon Must I Ask for a Meeting? You must ask for a meeting within 15 days from the date of this notice. Check the box on Attachment 10. Return it to your County Office. Do this as soon as possible.

2) **The Right to Appeal.** You can ask for an administrative appeal before a hearing officer.
   You can contest FmHA's decision to accelerate or continue acceleration of your loan.
   You can ask for an independent appraisal of the value of your land.
   You will have to pay for this appraisal. FmHA will give you three names of approved appraisers to choose from. Check box 4 if you want an independent appraisal.
   You can ask for an administrative appeal, even if you have asked for a meeting and your problems were not resolved at that meeting.
   You can ask for an appeal even if you do not have a meeting.

How to Ask for an Appeal. Check the box on Attachment 10 and mail it to your County Office within 30 days of getting this notice.

What Happens If You Do Not Respond?
If you do not respond to this notice by filling out Attachment 10, FmHA will accelerate or continue acceleration of any loans. This means they will take legal action to collect the unpaid loan including foreclosure as described above.

NOTE: Foreclosure means you lose the title to your land. *But* you can still apply for preservation loan service programs to keep possession of your house or farm. [See Exhibit A Attachment 1 sent to you on ________________ .

If you did not get these forms, contact your County Office *within 15 days* of this notice.]

The Right Not to Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract).

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith.

The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

____

County Supervisor
Farmers Home Administration
U.S. Department of Agriculture

Date: ________________

o0o

Note to County Supervisor:

This attachment will always be sent with Attachment 9.

See Section 1951.907(h)(2).

FmHA Instruction 1951-S
Exhibit A to Subpart S
Attachment 10

Response to Notice Informing Me of FmHA's Intent to Accelerate or Continue to Accelerate My Loan

Notice of My Rights

TO: County Supervisor, Farmers Home Administration

FROM: ______________________________
(Please print your name and address.)

I want to: *(Check one or more of the following boxes)*

☐ 1) Request a meeting with the FmHA County Official.
My telephone number is ______________.
I understand I do not lose my right to appeal if I ask for a meeting.

☐ 2) Voluntarily sign over to FmHA all the property used to secure my loan and settle my debt.

☐ 3) Request an administrative appeal.
I understand that I will be contacted by an official of FmHA's National Appeals Staff to set up an appeal hearing and give me more information.

☐ 4) Request an independent appraisal of property securing my loan(s). I understand I must pay for this appraisal. I understand that the hearing officer from the National Appeals Staff will give me names of three appraisers.

☐ 5) Preservation loan service programs.

Signed ______________________________

Date ______________________________

o0o

*U.S.Government Printing Office;1988-645-092/3

FmHA Instruction 1951-S
Exhibit F to Subpart S

NOTIFICATION OF OFFER TO RESTRUCTURE DEBT

(TO BE USED BY FmHA TO OFFER TO RESTRUCTURE THE BORROWER'S DEBT)

(Borrower's Name and Address)

Dear (Borrower's Name):

We have determined that the Farmers Home Administration (FmHA) can approve your request for primary loan servicing programs.

Our calculations indicate that you will be able to make the necessary annual payment on your FmHA loan if your loan is restructured through the use of primary loan servicing programs. Therefore, we are offering to restructure your FmHA debt in the following fashion:

____

____

(The County Supervisor will fill in the blank by describing exactly what would be done with the borrower's account.) For example, if the borrower has a farm ownership loan, the County Supervisor will fill in the blank by saying that ($ Amount) of principal and interest on that loan would be written off, and the remainder of the loan would be reamortized for 40 years from the original date of the loan, or up until __(date)__ at the limited resource interest rate, which is ______ percent, in exchange for the borrower signing a shared appreciation agreement, which is attached to the notice.)

The attached computer printout indicates the primary loan servicing program that will keep you on the farm and provide the greatest net recovery to the Government.

If you want FmHA to use the primary servicing program identified on the computer printout to keep you on the farm, you must accept this offer in writing. Your acceptance must be received by FmHA not later than 45 days from your receipt of this letter. You may accept this offer in writing by signing and returning the attached form titled "Acceptance of Offer to Restructure my Debt."

If you do not accept this offer, FmHA will deny your request for primary loan servicing. You will receive an additional notice stating that FmHA intends to liquidate your account. The notice will explain the reasons for this action and give you the opportunity to appeal.

YOU MAY HAVE A FEDERAL INCOME TAX LIABILITY IF FMHA RESTRUCTURES YOUR FmHA INDEBTEDNESS WITH A WRITE-DOWN. YOU SHOULD CONTACT THE INTERNAL REVENUE SERVICE (IRS) FOR INFORMATION ON THIS MATTER.

Sincerely,

COUNTY SUPERVISOR

oOo

Acceptance of Offer to Restructure My Debt

TO: County Supervisor, Farmers Home Administration

FROM: (Please print your name and address)

Dear County Supervisor:

I have received your offer to restructure my FmHA debt.

I would like to accept that offer.

Sincerely,

(Borrower's signature)

____
(Date)

oOo

Senator **Conrad**. If I could ask both of you to stay there, maybe you could move to one end of the table or the other, and we will ask the next group of witnesses to come down and maybe we can get a dialog going on some of these questions. That is perhaps the most productive thing we can do for the day.

We will be hearing from Alan Bergman, the president of the North Dakota Farmers Union; Andy Heinze, a farmer from Dazey, North Dakota; Darlene Pierson, a farmer from Knox, North Dakota; and Roger Johnson, Administrator of the Agricultural Mediation of the North Dakota Department of Agriculture; if you would please join us.

I might indicate that Mr. Renfrow, the vice-president of the North Dakota National Farmers Organization, of Mercer, was not able to be with us today. If Fred Larson, who will be providing the testimony for the Farm Bureau, is here, I ask that he would join this panel as well. We had earlier been told that perhaps Mr. Larson could not be here until later in the morning. So if he is here, we will proceed.

First of all, I want to welcome all of you and to say that we are going to try to deal with this as informally as possible. We do not want to just have some stultified hearing here where we go back and people feel, "Gee, I wish this question would have been asked of Mr. Leet," or "Gee, I wish this thing would have gotten out on the table and we could have discussed it."

Let us just agree here today that we are not going to leave here without giving everyone a chance to get their question answered, or at least that we attempt to get an answer. So if you have come here with a question, some misunderstanding, let us make sure we get it cleared up to the extent that we can.

With each of these witnesses, I will indicate once again that we will give you 10 minutes to summarize your testimony. All of your prepared testimony, of course, will be included in the record as if presented in full. Then we will have a chance to engage in a dialog here.

So we will open with Mr. Bergman, the president of the North Dakota Farmers Union, and then we will go to Mr. Larson, with the North Dakota Farm Bureau. Then we will hear from our farmers. We will close out with Roger. And hopefully we can get a dialog going here.

Welcome, Alan.

STATEMENT OF ALAN BERGMAN, PRESIDENT, NORTH DAKOTA FARMERS UNION, JAMESTOWN, ND

Mr. **Bergman**. Thank you, Mr. Chairman. My name is Alan Bergman. I am a farmer from North Dakota and president of North Dakota Farmers Union.

I would first like to thank you for coming to North Dakota to hold this hearing. I think it is very fitting that you serve as a chairman of the Subcommittee on Agricultural Credit because of all the hard work that you put into developing the Agricultural Credit Act of 1987. So, we appreciate that very much.

AGRICULTURAL CREDIT ACT OF 1987 WAS AN ESSENTIAL AND TIMELY LAW

First let me say that the Agricultural Credit Act of 1987 was an essential and timely law which sought to correct and to make the necessary adjustments so that this Nation's lender of last resort, the Farmers Home Administration, and the Nation's cooperative agricultural credit structure, the Farm Credit System, could carry out their mandates and responsibilities.

RESULT OF THIS LAW

As a result of this law, I think that we have reaffirmed many of the things that Farmers Home Administration was intended to do, but, administratively, they decided that they were not going to do, and through the process of court decisions were required to do. This law now mandates certain things to happen which we think is beneficial. I think the Congress had to reaffirm this. And we believe the Agricultural Credit Act of 1987, to a great extent, is fulfilling the purposes for which it was enacted.

COMPLEX LAW—WE DID OUR PART TO EDUCATE

Now, we do agree that it was a complex law and administrative requirements were complex to implement this. And we did our part as an organization last fall, along with other farm organizations, to try to educate people affected by this as to how to comply under the law.

Now, I would also like to say that I will keep my remarks primarily confined to the Farmers Home Administration. I would like to say on the outset that I think the Farm Credit System and the St. Paul District probably was ahead of the law, doing many of the things mandated under the law as far as restructuring and was a leader in that. I think we need to recognize that.

COMMEND THE DEDICATION AND THE EMPLOYEES OF OUR COUNTY FMHA OFFICES

The first thing I would like to do is commend the dedication and the employees of our county FmHA offices. They have had tremendous tasks. And I think it is important that we recognize that.

And second, I think I would like to commend the North Dakota Department of Agriculture's Farm Credit Counseling division, which provided both counseling and mediation services to producers in our State.

Between the work of these credit counselors, the county FmHA officials and employees, I think they have been able to make it work to carry out the mandates of the law.

SPECIAL CONCERNS

We do have a few special concerns, though. First, if the Agricultural Credit Act is to be successful, there must be adequate funding now and into the future for State mediation programs. That is essential. It is absolutely essential.

Second, that we have to have some type of relief for operating income and living expenses for those persons that have accelerated loans. We believe that that is a primary part of the problem.

Third, we are concerned with the problems of producers who are in the process of loan servicing, restructuring and mediation or have been unable to meet the USDA deadlines. That is affecting the signup of farm programs and other things. Simply put, a producer who has been unable to meet USDA deadlines should not be penalized for failure to meet such deadlines because of being in the midst of FmHA loan servicing options. This should not affect this loan restructuring. They should not be denied to have full rights to those programs.

Fourth, I think we would like to request that the subcommittee and the Congress continue to monitor the implementation of this law, especially as it applies to FmHA. We are in the midst of trying to work out one of the largest backlogs in the history of Farmers Home Administration in a very short period of time. We will really not know how successful this legislation is until this large initial group is completely processed through the system.

Fifth, we request that the subcommittee help clarify how Farmers Home will be carrying out its loan servicing options in the future. We keep hearing rumors that Farmers Home plans to have another round of delinquency notices sometime this year. It would be useful for borrowers, the farm counseling and mediation services, and for general farm organizations to know how the delinquencies are going to be handled in the future.

EXECUTIVE ORDER

Another issue that needs to be reviewed by the subcommittee is the entire issue of the Executive order which makes Farmers Home Administration lands available to the U.S. Fish and Wildlife Service for various easements.

Our most immediate concern with this regard is the issue of those producers who under the 1987 law acquired some rights as prior owners. We believe that in these instances, unless the prior owner is a willing participant, has debt forgiven for providing these conservation easements, and agrees to the conservation easements, that any agreement reached on this property between Farmers Home and the U.S. Fish and Wildlife Service should be null and void.

Therefore, we believe Congress should call a temporary halt in the implementation of this order until its impacts can be fully reviewed. Among the other impacts that need to considered are how this Executive order is affecting the viability of farm units within the FmHA inventory lands, how it will affect the farming community, and how it will affect the opportunities that could be available for beginning farmers on this inventory land.

PROVIDING MEANINGFUL OPPORTUNITIES

In addition to monitoring the success and the compliance of the law, Congress needs to, in our mind, begin looking at the next step.

The next step is how do we provide meaningful opportunities for future generations of producers and rebuild a base for family farm structure of agriculture as part of the needed economic development that we are going to have to have in rural America?

FURTHER ASSURANCES THAT FMHA INVENTORY LAND WILL ONLY BE AVAILABLE TO FAMILY FARM OPERATORS

We want some further assurances that FmHA inventory land will only be available to family farm operators. In a number of cases, larger-than-family farm operators were successful in bidding for the leases of this Farmers Home Administration land. We are fearful that these previous operators may be given a priority status to which they are not entitled. As we go through the priority status, a larger-than-family farmer should not be allowed the opportunity to purchase this land.

FUNDS

In the past number of years there has been a congressionally approved policy of shifting away from direct farm ownership and operating loans and toward guaranteed loan programs within FmHA. If we continue to shift funds in this direction, we will be phasing out FmHA's most meaningful and productive programs.

Now, if we lose this—and we are rapidly doing that, because this year the amount of money available in North Dakota is just a little bit more than what our State legislature just passed a law allocating from the State bank for beginning farmer loans. Now, that is terribly unfair, I believe, for a program that is designed to put farmers out on the land.

Now, this is in a direct contrast to the directions advocated in the recent report put out by the National Commission on Agricultural Finances. That report is an ideologically based, and I believe a self-serving report which seeks to divorce Federal farm credit programs from what they term as "social policy."

We would request that the subcommittee repudiate and reject the report of the National Commission on Agricultural Finances. We do not believe that it addresses the issue at all.

AG CREDIT ACT CAUSED DISCOURAGEMENT

We have to admit that we were frankly somewhat, as an organization, discouraged that the Agricultural Credit Act of 1987 did not differentiate between family farm producers and larger-than-family farm producers in the rights and the protections it provided to all the borrowers, both the Farmers Home and Farm Credit System borrowers. What we are saying is many times this allowed abuses. I would like to state that even chapter 12, under the Bankruptcy Code, did differentiate. We can argue about the numbers, where the differentiation should be, but there should be a differentiation of who we are trying to protect out here in rural America.

Again, I guess I just appreciate the opportunity to represent our concerns here, Senator, and thank you for coming to North Dakota to hold this hearing.

[The prepared statement and attachments of Mr. Bergman appear at the conclusion of the hearing.]

Senator CONRAD. Thank you, Mr. Bergman. I appreciate your participation.

Next, we will hear from Fred Larson, a member of the board of directors of the North Dakota Farm Bureau. Fred is with us from Grenora, North Dakota.

Welcome, Fred.

STATEMENT OF FRED LARSON, MEMBER, BOARD OF DIRECTORS, NORTH DAKOTA FARM BUREAU, GRENORA, ND

Mr. **Larson.** Thank you, Senator, for the opportunity to come and speak to you. As you said, I am from Grenora, North Dakota, which, for those of who do not know where it is at, it is in the northwest corner of the State. We have had some dry years up in that countryside, too.

Senator **Conrad.** Did you get rain?

Mr. **Larson.** We had a little bit of rain earlier. I left yesterday, so I do not know if it is raining there today or not.

Senator **Conrad.** Better call home. [Laughter.]

Mr. **Larson.** I will call home later.

FARM CREDIT IN THE 1980'S IS A VERY SERIOUS AND SENSITIVE ISSUE

As this hearing shows, farm credit in the 1980's is avery serious and sensitive issue. We have all types of problems within credit, those that are in the process of being liquidated, those that have been liquidated, and those who with, through no fault of their own lender, who may be liquidated. And hopefully this is one place where we can air our views and get the opportunity to get some of this settled.

LEGISLATION TO HELP

As there was in the past, laws were enacted to help make transition to another lifestyle easier or the hope to continue farming. We have one of those that we are talking about today and that is the Agricultural Credit Act of 1987. For some, this law was passed too late, for some, it was passed just in time, and for others, it just does not make any difference at all for one reason or another. They are either financially able to continue farming, or they were out of farming and voluntarily decided to quit years ago. Some farmers were unable to be helped no matter what law was passed, and some were in a financial position that they needed no help. The reasons behind these stories of failure and success are as varied as are the people themselves that are involved. Whether it be a timely rain, buying extra land before prices rise, or just paying off the debt and not having to pay high interest rates, or be it the inverse of these situations, of not getting the rain or having to pay high interest that put them in the position that they were in.

The ones that we are here today to talk about are the ones who were affected by this law, those that were in financial trouble at the time of its passage. Those people are not necessarily guaranteed success.

Even under this law, it is going to take much effort and many other things to fall into place for these people to be able to make it in farming and to stay in farming.

LENDERS IMPACTED

Although all lenders have been somewhat impacted by the legislation, probably the most affected is the Farmers Home Administration. I believe that for most administrators at the county level the law is a good one.

A few of the biggest drawbacks I have heard about the law is it has created more paperwork and that people had to go out and implement the law before all of the rules and procedures were established for it, which is very difficult to do.

You talk to farmers. Farmers do not like the extra paperwork. And some feel that it does not go far enough. Where do you draw the line and when do you say, "enough is enough, it is time to move on to something else?" This law has set some of those guidelines, whether they are good or bad is a question that only time is going to answer for us.

FIGURES ON HOW THE LAW IS WORKING OR NOT WORKING

I have some figures on how the law is working or not working, from whatever point of view you may want to take. In my county, there were 38 packets sent out by FmHA to farmers who were in financial trouble. Of those 38, only 14 responded. That means that 63 percent of the packets that were sent out were not returned for one reason or another. The most generally held belief is that these people are no longer in farming for one reason or another. In these cases the law was enacted too late to do any good. Of the 14 that are left, 4 qualified for write-down; 3 qualified for rescheduling, which they might have anyway; 1 was turned down, for which there is an appeal process available—of which you were discussing with Ralph here earlier—the last 6 are in mediation with other lenders since they are borrowing money from more than one lender at a time.

IMPACT ON OTHER LENDING INSTITUTIONS

As far as other lending institutions are concerned, it does not have as great an impact on them. They are not under direct Government control. Some of the things that it does do is that it forces them into mediation rather than letting it be voluntary; it sets down time limits; and it possibly opens up lines of communications between borrowers and lenders who might not sit down and talk otherwise. It forces the borrower to talk to the lender and the lender to talk to the borrower.

TO THOSE BORROWERS WHO THOUGHT IT WAS GOING TO BE THE ANSWER TO ALL OF THEIR PROBLEMS, IT IS NOT

To those borrowers who thought it was going to be the answer to all of their problems, it is not. It sets down rules and time limits for them to respond and if they want help from mediation or some other means, it forces them to respond and return information to the lender who they may have just ignored before. It also gives them a lot mor paperwork, but it also may give them better records and ability to keep track of where they are and where they are going.

CLOSING REMARKS

In closing, I would like to say that there have been some successes with this act in that it has allowed some people to remain out on the farm, and there have been some cases who have not. I think that we all have some of them in our own area, and no one likes to be thought of as a failure, but maybe they can find something else in which to make themselves a success. Also, through this process we have gotten some lenders to use more prudent lending practices and work with their borrowers more closely so as to avoid the problems of the past.

I guess one thing I would like to say is that I can sit up here and say some of these things because my family farm was foreclosed upon. I am in the process of buying it back. It is not an easy road. I feel maybe there is a chance or there is some hope from some other people.

I guess the thing that I hate to see is, of the 63 percent who did not respond to FmHA, what is happening to them and what good is it going to do to send them a foreclosure notice at this point in time.

Thank you, Senator.

[The prepared statement of Mr. Larson appears at the conclusion of the hearing.]

Senator **Conrad**. Thank you, Fred. I appreciate that testimony and I appreciate what you must have been going through. It cannot be easy.

Let me, if I may, go back to Mr. Leet and Mr. Zimmerman to ask a question. On our earlier question about the appeal situation and what is occurring, I have just been searching and I found, now, testimony from Agriculture Commissioner Sarah Vogel that goes to this question.

Let me just read from her testimony briefly and then get your response. In the testimony, it indicates:

An FmHA borrower has no idea what will happen if he or she does not accept an FmHA offer to restructure. Thus far, County Supervisors have handled this situation in two different ways. One is to send the borrower attachments 5 and 6—I think, Mr. Zimmerman, that is what you were referring to—which afford the borrower some rights including appeal. The other is to send the borrower attachments 9 and 10, which offer the borrower virtually no relief. Because FmHA has not denied restructuring, the borrower cannot appeal incorrect information used by the County Supervisor in reaching FmHA's decision when attachments 9 and 10 are sent to the borrower.

So maybe we could clear up one thing right here. What should be sent? Attachments 5 and 6, from what I heard you say earlier, are the attachments that should be sent. Is that correct?

Mr. **Zimmerman**. If I can remember all of what is there, there are attachments 5 and 6, which Farmers Home Administration would use for a rejection or denial of primary servicing. If the borrower would have responded in his 45 day response time and had we gone through the process and had we determined it was not feasible, those are the two forms—those are the two attachments that would be sent

Attachments 9 and 10 are sent in those cases where a borrower would have received an application packet but did not respond at all. In those cases, when he was sent his first notification, he would have been given with that notification an opportunity to appeal at the very outset. Had he not responded at all, he would have forfeited his right to appeal. Because of no response, he would have been given attachments 9 and 10. And I am not sure—the 9 and 10, then, would have been given in a scenario where he did not apply.

Senator CONRAD. All right. That is what should occur if everything is working right. If the person responds and they get in the information that is necessary and there is a denial, then they should get attachments 5 and 6.

If they did not respond in time, or appropriately, I would presume, they did not meet the good faith test, then they would receive, if everything is working correctly, attachments 9 and 10.

Mr. ZIMMERMAN. That is correct. This whole process is specific. There are many attachments, and different attachments are used in different scenarios.

Senator CONRAD. All right. Thank you very much. Let us now turn to—yes? If you would identify yourself, again, for the record.

Mr. LANDENBERGER. Lane Landenberger with the State mediation program.

For what we have been talking about here, I personally know of at least five instances in the last week where the farmer was given an offer to restructure from Farmers Home Administration.

There were incorrect numbers used in making that determination. In a couple cases, it was Farmers Home changing of the numbers that made that decision—arrived at that, and in a couple of cases it was the farmers that arrived at that.

In all cases, those farmers were sent attachments 9 and 10. Not one of them was given attachments 5 and 6, although I personally was told by the State office over 2 months ago that in those cases those farmers would be sent attachments 5 and 6. But they have not been.

Senator CONRAD. To your knowledge, did those farmers respond in time?

Mr. LANDENBERGER. They sent in their packet within the 45 days, a decision was made by running the DALR$ program, but figures were changed on the Farm and Home Plan by Farmers Home Administration, and then the farmer is sent the offer to restructure.

In these cases, the farmer knows he cannot live up to that because the numbers were changed, not by himself but by Farmers Home Administration. In that case, that farmer has no form to appeal that decision because Farmers Home did not say no to anything. So he cannot appeal.

And now those farmers are getting attachments 9 and 10, which is the end of line before they foreclose.

Senator CONRAD. OK. Let me make sure that I understand what you are saying. Let me repeat what I think I have heard here and then you correct me if I am wrong. Then we will ask Mr. Zimmerman and Mr. Leet to have a chance to respond. Maybe these are inadvertent things, maybe it is something that can be worked out.

Let me see if I understand. Farmers returned their packets. They had certain numbers in those packets as to various assumptions. Those numbers were changed somewhere along the line—in some cases, you are asserting were changed by FmHA?

Mr. **Landenberger**. Correct.

Senator **Conrad**. Subsequently, FmHA made their offer to restructure.

Mr. **Landenberger**. That is correct.

Senator **Conrad**. The farmer determined that there is no way he could live with that offer because it would not work out.

Mr. **Landenberger**. That is correct.

Senator **Conrad**. The numbers have not been changed by the farmer but by FmHA.

Mr. **Landenberger**. In some of the cases, that is correct. In some of the other cases, maybe some numbers have been changed by the farmer.

Senator **Conrad**. In other words——

Mr. **Landenberger**. Larger deficiency payments.

Senator **Conrad**. Maybe two cases here. One is FmHA changed numbers, from what you are saying. Another possibility is the farmer sent a correction of some sort, or changed number because there was something left out. Is that——

Mr. **Landenberger**. Some change in his operation.

Senator **Conrad**. Some change in his operation. All right. Then FmHA sends back an offer, and the farmer does not agree to it and he is sent attachments 9 and 10.

Mr. **Landenberger**. That is correct.

Senator **Conrad**. Maybe we could ask Ralph or Mr. Zimmerman—is it Bob?

Mr. **Zimmerman**. Yes, sir.

Senator **Conrad**. Bob.

Mr. **Zimmerman**. The attachments 9 and 10 are responses for those cases in which an application or a response was never received from the borrower. It would be our intention that if there is going to be a denial of servicing, it would be with the attachments 5 and 6 in those cases where an application was filed.[1]

We are unable to respond unless we would have specific cases. We would have to look into them.

Senator **Conrad**. We understand and respect that. Obviously we have a situation here where, if that has occurred, it is not correct, perhaps inadvertent, and they should have received attachments 5 and 6, and hopefully that could be worked out.

Mr. **Zimmerman**. As I understand the question, as I understand the scenario presented, we would be using 5 and 6 and we would have to—we would want to proceed correctly. And, you know, we would have to look at it to see what did occur in those cases.

Mr. **Leet**. We would ask Lane to share those cases with us if he cares to.

Mr. **Landenberger**. Well, I am not going to tell the farmers' names at this time.

Senator **Conrad**. No. We would not want you to do that.

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[1] See pages 131 to 163 for material supplied for the record by Mr. Zimmerman.

Mr. **Landenberger**. The State office can be assured they will have that information very shortly.

Senator **Conrad**. All right. Very good.

[Letter of Lane Landenberger, Research Analyst, North Dakota Agricultural Mediation Service, dated June 19, 1989, follows:]

North Dakota Agricultural Mediation Service,
Credit Review Board,
Bismarck, ND, June 19, 1989.

Christine Sarcone, *Chief Clerk,*
Senate Committee on Agriculture, Nutrition, and Forestry, 328-A Russell Senate Office Building, Washington, DC.

RE: Testimony presented April 26, 1989, Bismarck, ND.

Dear Ms. Sarcone: Thank you for the draft copy of my testimony presented in April before the Committee on Agriculture, Nutrition, and Forestry.

The draft is being returned marked "OK AS IS."

It may be of interest to the Senate Committee, however, that on the day after the hearing, Farmers Home Administration in North Dakota completely reversed their position and agreed with my assertions.

On page 52, lines 21 and 22, Mr. Leet asked that I share with them examples of farmers receiving attachments 9 and 10 in cases where Mr. Leet and Mr. Zimmerman stated the farmers were receiving attachments 5 and 6.

On April 27, 1989, when I presented Mr. Zimmerman with examples of cases where FmHA was indeed sending attachments 9 and 10, Mr. Zimmerman admitted to making a mistake in his testimony.

Unfortunately, because of this mistake my concerns on this issue were not, and have not, been addressed or the problems thereof rectified.

Thank you to the committee for the opportunity to testify.

Sincerely,

Lane Landenberger,
Research Analyst, ND Agricultural Mediation Service.

Senator **Conrad**. Mr. Heinze.

Mr. **Heinze**. My name is Andy Heinze, a farmer from Dazey, and I would like to expound on my own situation.

In my case, my Farm Plan was changed by the FmHA Supervisor to use funds to pay on FmHA unsecured debt and left secured creditors with very little. And that is how I had used my Farm Plan.

And I would like to compliment FmHA on sending out the instructions, that were the first time I ever really knew how to fill out the Farm Plan. Before, when I did my Farm Plan, the FmHA just changed it, this is what is going to work.

But now I know how to fill it out myself with the instructions that were sent with that. But then when I submitted that, without my knowledge, they changed my plan to pay on their unsecured debt and left secured creditors with very little.

Senator **Conrad**. So when the offer came back to you, did you not agree to the offer?

Mr. **Heinze**. Right. For various other reasons, too.

Senator **Conrad**. Then what attachments did you receive? Or have you received attachments?

Mr. **Heinze**. I am in mediation right now—continuous mediation.

Senator **Conrad**. OK. Why don't we, at this juncture, Mr. Heinze, allow you to provide your testimony, and then we will proceed with the others as well and continue the discussion.

STATEMENT OF ANDREW HEINZE, GRAIN AND BEEF FARM, MEMBER, DAKOTA RESOURCE COUNCIL/NATIONAL FAMILY FARM COALITION, DAZEY, ND

Mr. HEINZE. Thank you. I won't go further with—Mr. Bergman and Mr. Larson's remarks reflect many of my own personal feelings. I would like to thank them for their comments.

DRC AND ITS MEMBERSHIP

In honor to the Senate Subcommittee on Agricultural Credit, I would like to start by saying that the Creator grace the wisdom needed to resolve the problems at hand in a way that does justice for a more humane and sustained agriculture.

On behalf of the Dakota Resource Council [DRC] and the National Family Farm Coalition, I would like to thank Senator Conrad for bringing this oversight hearing to North Dakota and for the opportunity to be a part of this panel addressing the problems we here in North Dakota face regarding FmHA's implementation of the Ag Credit Act of 1987. Dakota Resource Council is a grassroots membership organization of farmers, ranchers, and small business people dedicated to the preservation of the rural community and its agricultural economy. We are a part of the National Family Farm Coalition, based in Washington, D.C., which represents 42 member organizations such as ours in 35 States. The coalition advocates Federal policies that strengthen and protect American family farming.

Now, I have been asked to continue on my own personal problems, and that could possibly include that of many farmers.

WE HAVE ALWAYS MANAGED WITH A COGNIZANT VIEW OF SUSTAINABLE AGRICULTURE

My wife, three small children and I operate a diversified farm by Dazey, ND. We have always managed with a cognizant view of sustainable agriculture, and I feel very fortunate to have recently focused strong efforts toward an innovative soil science technique and a resourceful agricultural economics approach at North Dakota State University. We continue to with the support from a vast array of people and have been awarded at the North Dakota Inventors and Entrepreneurs Congress.

I am currently president of the Sodbusters Club, an organization established for over 40 years, and I am a practicing family community leadership trainer.

EXPOSE FMHA'S FURTHER DISREGARD OF THE CONGRESSIONAL INTENT TO AID FINANCIALLY STRAPPED FAMILY FARMERS

I traveled here today to help expose FmHA's further disregard of the congressional intent to aid financially strapped family farmers. We all know that the court system would not have been able to handle the caseload of 80,000 households if instructed and counseled properly through a chapter 12 bankruptcy, and this would carry out the demise. It would be possible that the twisting of this design of the 1987 farm act would carry out a demise of troubled farmers. I sincerely hope not, but I have to ask myself that question as I struggle through the maze of technical calculations.

I have to admit that in some cases the DALR$ program worked like a charm. Where the appraisals could show that the equity was the true value and the net recovery reflected FmHA's secured position, the farmer's choices were in black and white.

My personal experience was that there were many "armchair" appraisals done on cattle, land, and equipment that could just be the beginning of a borrower's venture through the tar pit and briar patch. Logic seemed to be thrown out the window as soon as some problems began to occur.

First of all, the Farm Plan and the cash-flow were changed to the programmer's personal flair without any notification. The signed document could be manipulated fractionally and the outcome could become quite different. Then I am offered net recovery buyout at an appraisal done from a glancing remembrance that the equipment was there at the last inventory check. When I hired an inspection from the FmHA approved appraisers list the experienced person determined a value that is just over 50 percent of what FmHA had appraised. Upon offer of net recovery buyout, I am immediately offered mediation with just minimal lip service on why my Farm Plan did not work, although I had had structured debt payments and family sustenance in a plan where I, the manager, was willing to put forth a good faith effort to satisfy all secured creditors.

I accepted mediation and discovered afterward that anything that FmHA had appraised was cast in stone and that I would have to go through an appeals process and forgo any benefits of mediation if I need a factual appraisal.

I do not believe this was right. I think we should have come to some light before I got into mediation. And it is causing some problems with my other lenders and I have not been able to obtain a operating loan because of this type of maneuvering.

We came to the mediation and, for some unknown reason, a recording for my own use is very much shunned.

One point that I want to make——

Senator CONRAD. Could I stop you there and ask you—I read your testimony last night, and one of the reasons I rode Mr. Zimmerman and Mr. Leet, Bob and Ralph, earlier about discouraging people from having a recording of mediation session was because of what happened in your testimony. Who discouraged you from having a recording of what was going on in the mediation session?

Mr. HEINZE. Well, the mediator did the discouragement. And he said I could take as many notes as I wanted. And I just took it that was the way the program operated. So I guess I just left it at that. If that is the rule, I would play by the rule.

Senator CONRAD. Roger, if you would identify yourself for the record.

Mr. JOHNSON. Roger Johnson, the Administrator of the North Dakota Ag Mediation Service.

Chairman Conrad, that is very likely what did happen. The mediation process itself is a very informal form of dispute resolution. There is a third party involved but the third party does not make a binding decision on any of the other participants in the dispute. All of the mediation training that we have received from professional mediators strongly suggest that tape recorders not be used during the session. And the reason for that is that mediation in the process of dispute resolution is about three steps removed from the appeals process.

So it is not a formal hearing. It is more a meeting to get together and discuss, and hopefully discuss freely, any and all different options or opportunities that might be available to resolve that problem.

In addition to that, there is an agreement that everyone signs as a participant to mediation, and that agreement basically binds them all to confidentiality, so that whatever is the outcome of that mediation session is not widely spread around the community, or whatever. So there is a binding confidentiality.

There is also another part of that agreement, when they sign when they participate in mediation, is an agreement that nobody waives any of their legal rights. So whether there is a tape recorder there or not, all of their legal rights are protected, all of their later appeal rights are protected, and so forth.

The mediation process fits in a niche ahead of the appeal process and it is an informal process. That is the reason for that.

Senator **CONRAD**. Thank you.

Mr. **JOHNSON**. All right.

Mr. **HEINZE**. I would like to add one thing to that. I would like, in respect that we bind ourselves to confidentiality, and in that matter a tape recording could have been used so that some—ours was a lengthy mediation and it was real hard to keep track of all the productive things that came out of it. And it would have been a help for my own personal use if I would have been able to record that.

Senator **CONRAD**. OK.

Mr. **HEINZE**. OK.

Senator **CONRAD**. Anything else?

Mr. **HEINZE**. One other point that I was just going to make was that—and I understand that it may be true in several cases that I have heard—is that the Supervisor that helped me structure my loans and began my farming operation—and I have respect for all these supervisors and the tremendous job that they do—that he is no longer with the office, the way that my farming was structured through FmHA. Now we have a new supervisor and he is not, you know, in tune with what we began with. But I will continue with that. That is just the way things happen to be in my instance. FmHA's position at mediation was to restructure other secured creditors' payments, which others would possibly agree to but may not be in my best interests.

To attain a more realistic net recovery buyout, I would have to terminate mediation and go through the appeals process, which may be like Columbus's adventure to the new world. No one seems to know how the outcome of an appeal may work. How come?

DALR$ program and its programming is now confidential. Would not things go faster and better thought-out if the manager of the farm knew these things, how these things worked, and how it may possibly affect him?

I say that the farmer should understand exactly what goes on and understand the checks and balances needed to ensure that honesty was used in the process and he would not have to try to get a computer to answer to wrongdoing.

In my personal experience, I tried to get partial release of cattle receipts for family living, feed and other expenses involved with raising livestock, but they would not release or even work with me. I had to use money that could have been paid to other secured creditors to sustain FmHA chatteled livestock. A real mess is created when FmHA believes that moneys should have went to pay on their unsecured loans and other secured creditors will have to go without payments. I asked the FmHA Supervisor what I should do with my established marketing plan of livestock. He said that I could sell them and hold the check as long as I did not try to convert. He did not tell me that there was an appeals process upon formal denial of release of funds. Ignorance replaced law in my case, and I am now just trying to get money released from livestock to care for them and to provide some return on labor and provide for my family.

Why is a farmer shielded from what might be in his best interest?

The Administration has set forth publicity that has put a bad face on small farmers. I think that it is the proliferation of the public attitude that farmers are given all the breaks and that the orchestration of laws that the Administration did not like, the farm character will demise. This makes family farms look greedy when actually the opposite is true. As a matter of fact, most operations decided to keep expansion to a minimum, because of the basic understanding that every bigger farm removes another family farm from the community. If we are getting all the breaks, how come so many are shopping in the nearly new stores and driving cars at least 15 years old so they can provide for their families?

We believe that it was William Jennings Bryan who said, "City people should never be more than one generation removed from the farm or they will lose the understanding of what it takes to produce the food and fiber we all enjoy." While that may be somewhat unrealistic in today's society, there is still much truth in that statement. The general public does not understand what it takes to provide healthy farm produce. Our rich soils are often mined of their humus and nutrients so that the farmer can make ends meet. This leaves soils vulnerable to erosion and environmental degradation. A great deal of money is used to administer efforts to conserve soil. Maybe we are missing the underlying cause of many of agriculture's and the economy's problem. Maybe the wealth of a nation is determined by what raw material wealth it produces times an equitable price achieved from that abundance. We believe that "wealthy" could again be a word describing a vast majority of Americans instead of just a chosen or lucky few.

Many of us know the better things in life but most of the time it is not appreciated. Greed replaces need. In our country we have the right to be free and the right to be equal. But these things are not guaranteed. Freedoms have to be preserved and nurtured, or they are lost as silently as the stars disappear in the dawning skies.

How do we prevent socialism and demagoguery? I believe promoting individualism and self-worth creates the most respect for fellowman.

Thank you. I would be happy to answer any questions that you have.

Also, I have sent a statement [letter] concerning FmHA release of funds and a public document (Acres U.S.A. Radio Program) providing insight into problems that will continue to arise in the countryside.

[The prepared statement and attachments of Mr. Heinze appear at the conclusion of the hearing.]

Senator CONRAD. If I might, my intention is really to try to complete the panel and then ask questions. But if I might, Mr. Heinze, after you received notice from FmHA that you did not qualify for primary loan servicing, at that point did you ask for a meeting with the County Supervisor to discuss why you have been turned down and to go over it?

Mr. HEINZE. Well, I was immediately sent a letter to either accept mediation or to deny, and then I understood that I would get attachments 5 and 6 to go through my appeal if I went that route.

But I believe that it was necessary to have a mediation. I believe in the mediation process. But I thought that FmHA should come out and do a just appraisal. And I tried to do that by getting—I attained an appraiser's sheet. From the time that I requested, it was about 3 weeks to get an appraisal—approved appraisal sheet.

And I had another appraisal done just for the benefit of FmHA, to see if they had done a correct appraisal. His appraisal came up with 50 percent of the value, and that could not even be brought out in the mediation process, that other creditors had outlined their ideas.

It was real hard for my bank to assume this net recovery buyout and take my cattle and equipment on a mortgage that is above the value of that. And the bank is not willing to accept that proposal at this time.

Senator CONRAD. Roger, anything you want to add to what you have just heard here?

Mr. JOHNSON. I would just say, Mr. Chairman, that I think it is a legitimate concern, the problem of having to go through the mediation process prior to having the right to an appeal. Because obviously if an appraisal is way out of line, it certainly, I think, would have an effect on how other creditors might act and what decisions might be able to be reached at a mediation session.

Senator CONRAD. Can I go back, Andy? You indicate that you have a problem with the appraisal that was made that is included in the FmHA packet. Am I correct?

Mr. HEINZE. Um-hum.

Senator CONRAD. Could you tell me what—other than the difference in valuation—I understand you had another appraiser come and had a 50 percent reduction from what the appraisal was that was done by the FmHA appraiser. But in terms of the appraisal process itself, do you feel that the appraisal that was done for FmHA was not thorough, was not complete? Could you describe what led you to conclude that?

Mr. HEINZE. Well, exactly. They have not looked at my equipment very—besides checking it, that it was there, on their visits to my farm, which is yearly, that they have never taken into effect the upkeep. And the wear and tear on that equipment is getting to be quite serious.

And they did not come out and make an onsite appraisal. They did it from the armchair type of appraisal. And that is the difficultly that I have with coming up with the true value that the congressional intent provided of net recovery buyout was a true value. And I would be able to go to my local lending institution, which was in favor of keeping me on the farm, and get a just value on that chattel of livestock and equipment.

Senator CONRAD. All right. We need to pause for just a minute so the court reporter can change paper in the machine. And then it is my intention to go to Darlene Pierson and Roger Johnson. And if Tom Disselhorst is here, if he would join the panel as well.

[Recess.]

Senator CONRAD. OK. We will resume.

Mr. Heinze, you had another comment that you wanted to make, I think?

Mr. HEINZE. Yes. I have now, though, through a very persistent effort on my part, persuaded the FmHA Supervisor to reevaluate the primary appraisal by an onsite observation. But on the other end of that, my mediation will be terminated by about the end of this month. And it will be hard to get all of these things together because they are so overworked at the office down there that my mediation will expire. And I do not know how I am going to rectify that problem at this time.

Senator CONRAD. All right. Next, we will hear from Darlene Pierson, a farmer from Knox, North Dakota. Welcome.

STATEMENT OF DARLENE PIERSON, FARMER, KNOX, ND

Ms. PIERSON. Thank you, Senator. My husband and I farm south of Knox, which is not too far from Rugby, North Dakota.

RESTRUCTURE PACKET

We were 2 years delinquent with FmHA, and as a result FmHA was required to send us a restructure packet, enabling us to present our current financial position, and a proposal outlining what we perceive as a way to repay our creditors.

We completed the restructure packet and proposed the following:

First, pay FmHA 1 year's delinquent payments from the sale of inventory grain and the 1988 disaster payment.

Second, pay the 1988 outstanding operating bills from the sale of the inventory grain and the 1988 disaster payment.

Third, pay all real estate taxes from the sale of the inventory grain and the 1988 disaster payment.

Fourth, pay interest and principal current at both chattel creditors from the sale of inventory grain and the 1988 disaster payment.

Fifth, we ask that the remaining inventory grain and the 1988 disaster payment would be used for 1989 farm operating and family living.

Sixth, that FmHA would [reamortize] restructure/reschedule the one remaining delinquent payment.

This would have enabled us to bring all debts current, and still allow us necessary funds to live and operate on for 1989, without having to borrow from our bank at 13 percent interest.

We have not purposely put ourselves in a delinquent position, but through past high interest periods, and three very extremely dry growing seasons, we have fallen victim to this financial position. The long-term solution, we thought, was simple and obvious, as I have outlined, and it has been very discouraging and disappointing to us when this one-time opportunity presented through the Agricultural Credit Act of 1987 has not been interpreted that way.

FMHA'S INTERPRETATION AND RESPONSE

FmHA responded to our proposed restructure by requiring us to sell all grain onhand, and applying those proceeds, along with the 1988 disaster payment, first to their delinquent debt, and then to other creditors. This would have brought us current with FmHA and hopefully with all other creditors, but we would have no family living left for 1989, nor would we have had any operating for 1989 at that point, unless we were going to have to borrow from another source at 13 percent in order to get family living and farm operating. In our judgment, this is contrary to what the restructure intends to do regarding viability of farm units, as we are being forced to liquidate cash assets, and borrow at high interest rates which have a negative cash-flow effect.

FmHA has offered us nothing positive through this restructure, but instead what has been offered puts us in a position where we will probably have to restructure again next year. We are not asking FmHA to write-off any debt, but only to reamortize/reschedule our debt. It appears to us that our request is the fairest and most equitable for everyone, and that it assures us and all of our creditors of long-term viability. Thank you.

Senator CONRAD. Thank you very much. Mr. Zimmerman or Mr. Leet, would you want to respond to the presentation?

Mr. LEET. I think that we would rather find out what the case is before we respond. As to the particular criticism that they have, I would want to check out what the facts are.

Senator CONRAD. All right. That is reasonable. Mr. Zimmerman.

Mr. ZIMMERMAN. I would like to add that, as I understood the explanation, did I understand that the borrower had the ability to pay current?

Ms. PIERSON. If we liquidate our grain that we have onhand, yes.

Senator CONRAD. Then the problem is no living or operating money.

Mr. ZIMMERMAN. The regulations under the Ag Credit Act that Farmers Home Administration now has in place indicate that if a borrower has the ability to pay current, that the borrower must pay current. In regard to——

Senator CONRAD. But they are allowed living expenses, certainly?

Mr. ZIMMERMAN. That is correct. There is also the opportunity to apply for loans, operating loans, with Farmers Home Administration or with other credit. I do not know what the current rate of interest is, but Farmers Home Administration regulations are that if someone is able—has the payability to borrow from conventional credit sources and everyone else, or many farmers are paying current rate, that that is the rate that is available.

So if it is possible to pay current and still have payability for borrowing annual operating needs, then that, we would say, is what would be necessary.

Senator CONRAD. Let me just pursue this. Obviously you cannot know the details of every case and we understand that. But let us just—as a hypothetical matter, it would not be your policy, I am sure, to say to somebody, you have got to pay current and have nothing left over for living expenses. I mean, that would not be a rational response to this situation.

Mr. ZIMMERMAN. We would have to look at each individual case. The regulations do allow for release for family living and farm operating through periods of time where there is security available and that needs to be done to keep an operation ongoing.

But we also have to look at the overall picture. The overall picture being that if there is a possibility for making payments to creditors and the potential for borrowing for annual operating credit, which is not uncommon, that that is also a scenario. So we have to look at all cases on a case-by-case basis.

Senator CONRAD. Could I just ask that you take a personal look at this case and let me know what your reaction is? I would appreciate that.

Mr. ZIMMERMAN. OK. I will need to get the name.

Senator CONRAD. All right. Thank you very much.

Roger, why don't you proceed with your testimony and then we will have a chance for people to ask some questions.

Tom, much of your testimony involves the Farm Credit System, if I am not mistaken.

Mr. DISSELHORST. That is correct.

Senator CONRAD. But you may have a comment with regards to FmHA as well before we lose Ralph and Bob.

So Roger, why don't you proceed?

STATEMENT OF ROGER JOHNSON, ADMINISTRATOR, AGRICULTURAL MEDIATION, NORTH DAKOTA DEPARTMENT OF AGRICULTURE, BISMARCK, ND

Mr. JOHNSON. Thank you, Mr. Chairman. And I would like to really, really thank you, Senator, and the Senate subcommittee for holding this hearing and certainly for inviting Sarah Vogel, Commissioner of Agriculture and my boss, to present testimony. Commissioner Vogel is in Canada this week at an international meeting on the free-trade agreement and so she was not able to be here.

What I would like to do if I might, rather than read the prepared remarks that we put together, everyone in the Ag Department, is just summarize briefly points that I think were not previously addressed and keep my comments only specifically to FmHA. I think that is what you are wanting.

Senator CONRAD. I would appreciate that. It would be very useful right now.

Mr. **Johnson**. OK. About half of my testimony here relates to Farm Credit Services. While I think it is terribly important, it probably does not fit at this point.

FMHA UNDERSTAFFED

The first point that I would like to make, and it is just pretty much a reiteration of something that has been said earlier but I think it is a terribly important point, is that the Farmers Home Administration is seriously understaffed. And I think many of problems that we have been discussing here this morning are a direct result of that.

The workload has been tremendous on the Farmers Home employees as well as on virtually every agency or organization associated with Farmers Home because of—and much of that because of the Ag Credit Act of 1987. And so I want to reemphasize that point, that the lack of staff, I think, is a real serious problem.

INCONSISTENCY

The second point that we have made in the testimony relates to inconsistency—and I think that one is really a subpoint of lack of staff—interpreting regulations in different manners. The regulations obviously are very lengthy, very complex, in many cases very cumbersome, in some cases lead you to read them two or three different directions. And so obviously we are getting inconsistent interpretations of those regulations from county to county. And I think that is a problem.

PROJECTIONS

The third point that I would like to make relates to projections and the use of 5-year histories, and so forth. And the point that I would like to make here is it is a two-edge sword. It is basically that when using 5-year histories as the basis of making projections on new Farm and Home Plans, the regulations require the use where, in disaster areas or counties adjacent to disaster areas, that Farmers Home is supposed to plug in the county average yield in the place of the actual yield.

One of the alternatives that we would suggest is that, rather than plugging in that—that county average, is that you might plug in the Federal crop insurance guarantee level, which is lower than the county average in most cases—not all, but in most cases would be lower.

Senator **Conrad**. That would require a legal change, would it not?

Mr. **Johnson**. It probably would.

Senator **Conrad**. My recollection is that is a matter of law. Bob, do you——

Mr. **Zimmerman**. I do not recall specifically on that.

Senator **Conrad**. It seems to me that would require a legal change.

Mr. **Johnson**. The rationale for that suggestion—and like I mentioned, it is certainly a two-edged sword because it will result in some farm plans possibly not cash-flowing on paper that might otherwise have. The problem that I see coming down the road is that we are going to have, in many cases, artificially high projections that are going to result in restructure to a given level which, by definition, are probably not going to be achieved on average because we are going to have a higher than actual average that will be used in those projections.

And so I suspect that this restructure process will repeat itself pretty much on an annual basis in a lot of those cases. That is one of the concerns that we have.

MANIPULATING NUMBERS WITHOUT AUTHORITY

The fourth concern we entitled manipulating numbers without authority, and I think much of that has already been addressed this morning. I will not make any additional comment on that.

MEDIATION

The fifth one related to mediation. And I do want to spend a little bit of time talking about mediation. And maybe it is a bit selfish——

Senator CONRAD. If I might, Roger, just stop you. Before we go on to that, which I very much want to get into, I do think we should get a clarification—FmHA should have a chance to respond to that.

The basic point being that—and we have heard it several times—that County Supervisors, or at some level of FmHA staff, change numbers without authorization from the farmer. Is that allowable? Could you explain to us, Bob, how that might occur?

Mr. ZIMMERMAN. I would like to address that. Farmers Home Administration has been working with the borrowers for a long time in many cases and the regulations do call for projections to be made on the basis of history and to be—you know, that there is these bases.

And with annual analysis done year after year, we may have material in our file which would have been presented at annual analysis time which may not be the same as what was presented in a Farm and Home Plan that was given for the purpose of servicing.

It would not be our intention to change the Farm and Home Plan but rather, if we disagree with the proposal that was given, have a separate set of numbers.

It would be our intention to run a DALR$ program on what we believe to be correct and run a DALR$ program on what has been presented and make a determination, then, on what we believe, on the basis of what we have in our files, to be more accurate.

That way, if we have an obvious disagreement and that disagreement could be taken care of at the appeal hearing with the appeal hearing officer, an independent appeal hearing officer, seeing the differences that we see and making a judgment on that basis.

So there is, in all likelihood, times where the numbers that we are using and that we have made a judgment on are not the same. But it is because of a disagreement.

Senator CONRAD. Well, Tom, why don't we start with you? Identify yourself for the record. I see a number of people wanting to comment on this point, so let us just go down the line and give everybody a chance.

L

Mr. **Disselhorst**. My name is Tom Disselhorst. I am an attorney in Bismarck, North Dakota. I have worked with farmers for about the last 8 years in various matters concerning Farmers Home Administration and other lenders.

I just wanted to comment very briefly on what was just said about the changing of numbers. I think the problem is not so much that there might be a need to change numbers. Lots of times inaccuracies may pop up where the farmer may not have remembered the numbers properly, or he may have not kept the records properly, or for whatever reason the numbers may not be right.

I think what is bothersome is that the farmer is not informed that the changes are being made and he is not consulted when the changes are being made. He gets the final plan and sees these numbers changed and does not understand.

I think there ought to be—in the ideal situation, there ought to be some communication between lender and borrower so that they can reach some kind of conciliation before it goes to an appeal process. I think that is the rational way to do it.

Senator **Conrad**. Might I just observe that I agree with the earlier observation of Roger. Everything I have heard is that FmHA is swamped.

Again, I want to reiterate what I said on the front end. I for one, and I think many others, have a lot of respect for the people who are doing this work. This has been truly an awesome workload, and so that part of what is occurring here may well be the result of situations in which you have somebody who has so much work making changes because in their files they have different numbers and the communication loop is not closed.

Maybe we can just get a response from Ralph or Bob on that question.

Mr. **Leet**. Well, hopefully when we get through this initial 2,300 cases, we will have more time to do a better job of communication with our borrowers. Sure, this has been a really traumatic time, not only 1 year, but the last 2, 3, 4 years have been really traumatic for our people.

Yes, we are short of trained people. We did get additional resources this year, but you hire temporary people they can only do certain things. They really cannot make the analysis needed and they cannot do the communication needed with our farm borrowers.

So we do need help that is why we use contractors. We are forced to use our contract authority to the greatest extent we can. When we go to all these sources to get help—temporary help and contractors—there is confusion sometimes.

We have to continually have training meetings with our District Directors, our County Supervisors have to come in to meet with the District Directors. The more complications we have, the more work we have to do, the more meetings we have to bring our people into to get all the errors corrected. As we go along, that is what we try to do.

Senator **Conrad**. I admire the honesty and forthcoming nature of your response. I think it is the simple truth, and the best we can do is work together to try to get through this.

Bob, did you want to make an additional comment? Then we will go to Andy and right down the line.

Mr. ZIMMERMAN. I just wanted to add as a reminder that, with everything that was said, that all this has to be done in the 60-day response time.

Senator CONRAD. Yes.

Mr. ZIMMERMAN. And oftentimes, with the rule of reason that was implemented, Farmers Home Administration in many cases did not get 60 days. So everything that is said is absolutely correct. It is not a secret. It is just a matter of responding.

Senator CONRAD. All right. Andy.

Mr. HEINZE. Yes. I would like to ask Mr. Leet how come farmers cannot have access to a DALR$ program so that things can be smoothed out and he knows exactly how these figures have been used, and maybe with the guidance of a credit counselor, for example, would understand the scenarios more completely and maybe speed up the process?

Mr. ZIMMERMAN. May I?

Senator CONRAD. Sure.

Mr. ZIMMERMAN. The question is—are you asking if you can have a copy of the computerized program?

Mr. HEINZE. Or somebody should have a copy of it.

Mr. ZIMMERMAN. We can give anybody an address as to how to obtain computerized programs. Also in the packet that you received, that all borrowers would have received, there would have been in that an attachment which did make some effort to explain this, but it would not have meant not a whole lot to me because I am not computer wizard.

But it did attempt to explain what was going into the DALR$ program and how it would be utilized, and so on. But the program is available. We can give you an address. You can have it.

Mr. HEINZE. People that I talked to said it was not available. So that is the road that I was led onto.

Senator CONRAD. Karl Limvere.

Mr. LIMVERE. The DALR$ program is available. There is no question of that. The difficulty is that it is not available because nobody has compatible hardware. So it is available. But since it has such a unique hardware that has to go with it, it is not readily adaptable for anybody else. I do not know where—we have an equipment match problem that is significant with that.

One point that I did want to make in terms of the understaffing within FmHA. That has been a consistent pattern in recent years. And FmHA has testified before Congress that they had an adequacy of staff when they did not.

What they have been trying to do is standardize decisionmaking, and the DALR$ program is part of that effort to standardize decisionmaking. We previously had—I cannot recall the exact name of it—but a consolidated financial statement—or coordinated financial statement that was, again, try to standardize that kind of decisionmaking at the county level.

And we forget that the key word in FmHA is supervised credit. And not that the FmHA is going to substitute their decisions for that supervision. The individual has to make the decisions. They are to provide the supervision that helps to make it successful.

I think that is where we have fallen down. And we cannot have that when we have the kind of workload that our county FmHA offices have. They are not providing supervised credit. They are simply standardizing more and more. And we are losing that touch and thereby losing the effectiveness of that program.

Senator **Conrad**. All right. That was Karl Limvere of the North Dakota Farmers Union, for purposes of the record.

Let me just ask a question. We have heard a number of people say here, and I must say everywhere I have gone in this State there is a recognition that FmHA is swamped. That is not your responsibility, obviously, Bob and Ralph. You use the resources that are made available to you. Is it your observation that you could use additional resources? Ralph, you might want to answer that question.

Mr. **Leet**. We can always use a few good men or women. Yes. We need additional people. We have been understaffed for many, many years. The budget constraints, I suppose, in Washington are part of the factor.

We try to get by by using other resources, human resources, such as contracting and temporary employees. I try to make sure that we do have an ability to hire temporary employees in a cyclic way because our heavy load is during the winter months. So we are forced to manage our time better.

But we are understaffed, particularly with the changes that have come upon us the last 3 or 4 years. Once we would get a set of rules to follow, a set of rules that everybody understands, we would be able to perform a lot better. Constant changes are going to always create a shortage of staff for us, I think.

Senator **Conrad**. All right. Let us do this, if everybody will be patient, let us open the discussion up for the audience for 15 or 20 minutes so that if we have a specific question it could be addressed.

Oh, Roger, I am sorry. You have not——

Mr. **Johnson**. I have just started, Senator. [Laughter.]

Senator **Conrad**. Have at it. Then we will open it up to the public.

[Brief pause.]

Senator **Conrad**. Thank you, Roger. We appreciate those additional comments. Now we will open it up to the public. [Laughter.]

MEDIATION PROCESS

Mr. **Johnson**. I do have what I consider is a very serious concern about the mediation process as it relates directly to Farmers Home Administration, and I would like to take a little bit of time explaining that problem. The problem, as I see it, stems from regulations and perhaps from interpretations of those regulations.

There are a number of places in the Farmers Home regulations where it seems to imply that mediation for Farmers Home should relate to debt levels of other creditors.

In other words, there are places in the regulations where it says, you will refer this case to mediation if the feasible Farm Plan is not there in the event that there are other creditors involved. If there are no other creditors involved, they do not refer it to mediation. They only refer it when other creditors are there.

So at least the implication is there that other creditors need to make some concessions before FmHA is going to do anything different than what the DALR$ program spit out the first time.

There is also, though, a regulation, which I will read from. It is included in my testimony. It is 1951.912 paragraph A, subparagraph 1. In reading in part from that—it relates to States with USDA certified mediation programs—it says, and I quote: "The purpose of mediation is to participate with farm borrowers, and their creditors, in an effort to resolve issues necessary to overcome the borrower's financial difficulties."

A little further down it says: "under the same terms and conditions as other creditors."

That is where it refers to the conditions under which FmHA shall participate.

TWO SPECIFIC PROBLEMS

We see two real basic and specific problems in this area that we have identified just basically in the last week, and they are, first of all, that Farmers Home wants to mediate only other creditors' debts. In other words, they choose—they really are taking the approach that mediation should be largely centered around the debt levels of various other creditors and not on the Farm Plan that is laying on the table.

My belief is that any issue relating to the farmer's financial condition should be discussed during mediation and decisions should be reached during mediation by considering all of the issues and possible solutions. All parties to mediation, including the borrower, Farmers Home, and other creditors, must be prepared to explore any and all possible solutions to the problem. These possible solutions might include, for example, deeding back high-priced land; dropping high cash-rent land; renting more land; changing enterprises, going from a crop mix to a more heavily livestock mix, vice versa; changing species of livestock; including the use of more or less off-farm income.

I mean, the list can go on and on and on. There are thousands of different things that should be allowed to be discussed and considered during the mediation process. All of those changes, all of those different things that possibly could be talked about, would have a bearing on the Farm Plan, on the original input number going into that DALR$ program.

And I think that is really key to making mediation work successfully, is that all the parties need to be as unconstrained as possible in that mediation process. I have not run into that problem with any other creditor, other than Farmers Home, when it comes to mediation itself. So that is the first issue.

FARMERS HOME DOES NOT WANT TO MEDIATE IF OTHER CREDITORS ARE NOT "AT THE TABLE"

The second issue relates to Farmers Home does not want to mediate if other creditors are not "at the table." In other words, if Farmers Home and the borrower are the only people that show up at a mediation session and there is no agreement from the other creditors that something else can be done.

This issue really relates back to the first one because of the position that is being taken that they only want to mediate other creditors' debts. They do not necessarily want to talk about all the different possibilities that could be shown on a new or different Farm Plan. So it relates directly to that same argument.

The argument FmHA is using is that mediation should only be used to restructure other creditors' debts and that later informal meetings with the County Supervisor in appeal hearings could address FmHA concerns. And that really says the mediation process is worthless.

That argument says if FmHA and the farmer are the only ones at the table with the mediator, that you can do those same types of things with the Supervisor later, after he has been served attachments 5 and 6, but it negates the possibility of exploring all those different options on the Farm Plan, which I really think was the intent of the mediation program.

And that is the bulk of my concern on mediation. We discussed, I think, the other issues that I have in my testimony relating directly to Farmers Home.

FEDERAL MATCHING DOLLARS

One last comment that I would like to make relating to mediation itself is the Federal matching dollars, which I believe Alan Bergman mentioned earlier in his testimony.

I have some numbers in here talking about the increased workload that our office has seen. We basically are working with between 2,200 and 2,300 clients right now. And that number is up from a number of about 1,800 just 2 months ago, which is also a number that is up about 600 or 700 from what our last 2- or 3-year average has been.

So it is virtually a doubling in the workload within the past year. And so it is obviously been much more expensive for us than what we had anticipated as far as the number of people that we are having to put onboard and so forth. And I go into that in my testimony.

DIRECT LOANS AND GUARANTEED LOANS

A final note that I would like to make relating to direct loans and guaranteed loans. And I think this is really key because, to me, I think the FmHA guaranteed loans and that system of moving more and more away from insured and direct loans to guaranteed loans is absolutely the wrong direction to be moving. I think we ought to be moving in the total reverse of that direction.

I think there is a real acute need for supervised subsidized credit, direct credit, out there that is supervised with adequately staffed personnel from Farmers Home Administration. And there is not really that large a need on the part of the borrower for FmHA guaranteed loans.

FmHA guaranteed loans do not have a substantial effect on a borrower's ability to pay. Obviously they have a tremendous benefit for many of the creditors that are placing them, or that are receiving them. They are not really a great benefit to the borrower.

In fact, in many cases they are a detriment to that borrower because it much more confines what they can and cannot do.

The only real substantial economic benefit that they receive from them is a short-term interest rate concession, but shortly after that it goes back up.

Let me conclude with that, Senator. I know we are running over our time. I do think this mediation issue is——

Senator CONRAD. We are way ahead of time according to Senate schedule. [Laughter.]

Mr. JOHNSON. I glossed over a few things I should not have.

[The prepared statement and attachments of Sarah Vogel appear at the conclusion of the hearing.]

Senator CONRAD. Let us do this. We are into the noon hour. Let us give people who are here a chance to ask questions that they might have. I would very much like to do that.

So if there is anybody in the audience with a question or comment, if you would limit yourself to a minute or so, so we could give as many people an opportunity to ask a question or make a comment. Anybody here that would like to make a comment or ask a question?

Yes? Percy, if you go to one of the microphones.

Identify yourself for the record and whatever organization you are affiliated with, if you are affiliated with an organization. If you are a farmer, identify yourself that way.

OPEN MICROPHONE TESTIMONY

PERCY FIBELSTAD, BORROWER/PARALEGAL COUNSELOR, BISMARCK, ND

Mr. FIBELSTAD. Senator Conrad, for the record, my name is Percy Fibelstad. I live here in Bismarck.

I have been extensively involved in credit issues, as a borrower/paralegal counselor, and in a lobbying effort with the North Dakota Legislature for over 8 years.

GROSS INCONSISTENCY IN ADMINISTERING THE AGRICULTURAL CREDIT ACT OF 1987

My testimony here today is aimed at what I consider a gross inconsistency in administering the Agricultural Credit Act of 1987. These DALR$ programs have come back with accumulated—and started looking at the various things.

I have attached to my prepared statement a paper marked exhibit A. The figures in exhibit A have all been taken from five different cases in five different counties across the State of North Dakota. These five printouts are all concerned with management expenses of property. The only thing any of them have in common is an inventory period of 26.4 months, which is also arbitrary.

A closer analysis of these figures will reveal a monthly per acre variance from $0.01 per acre month to $1.47 per acre month, with costs in others of $0.13 per acre month, $0.41 per acre month, and $0.67 per acre month.

This discrepancy in running the DALR$ program would indicate to me that the FmHA has not provided consistent guidelines to the local county FmHA offices.

These inconsistencies cannot be ignored and all FmHA activities concerned with the DALR$ program should be suspended until guidelines can be promulgated that would correct these arbitrary figures which would have been used by the different counties. It is unthinkable that something like this is implemented in a manner as inconsistent and unfair as this.

[Exhibit A]

VARIANCE IN MANAGEMENT EXPENSES

Expenses while in inventory based on inventory period of 26.40 months management expense: ($.13 per acre/month)				
1,573 acres	×	1.50 per acre	=	5,190.90
$0.00 income	×	0.000 rate	=	0.00
$0.00 monthly management cost	×	26.40 months held	=	0.00
Expenses while in inventory based on inventory period of 26.40 months management expense: 800 acres ($.41 per acre/month)				
0.00 acres	×	0.00 per acre	=	0.00
$0.00 income	×	0.000 rate	=	0.00
$330.00 monthly management cost.	×	26.40 months held	=	8,712.00
Expenses while in inventory based on inventory period of 26.40 months management expense: 2,500 acres ($.01 per acre/month)				
0.00 acres	×	0.00 per acre	=	0.00
$0.00 income	×	0.000 rate	=	0.00
$20.00 monthly management cost.	×	26.40 months held	=	528.00
Expenses while in inventory based on inventory period of 26.40 months management expense: ($1.47 per acre/month)				
640 acres	×	10.00 per acre	=	14,080.00
$0.00 income	×	0.000 rate	=	0.00
$405.00 monthly management cost.	×	26.40 months held	=	10,692.00
Expenses while in inventory based on inventory period of 26.40 months management expense: 160 acres ($.67 acre/month)				
0.00 acres	×	0.00 per acre	=	0.00
$0.00 income	×	0.000 rate	=	0.00
$107.00 monthly management cost.	×	26.40 months held	=	2,824.80

Anyhow, when I am doing an analysis of this, when there is this much inconsistency in the one place, what are the other inconsistencies? How is this program—is it garbage in, garbage out? I would like to know.

Senator CONRAD. All right. Maybe we could ask Bob or Ralph to respond.

Mr. ZIMMERMAN. I would try to respond to this. Farmers Home Administration does get in to inventory all kinds of different properties. And in regard to the differences on these different properties, it depends on the property itself.

We are talking about management costs on farms that are loaded up with leafy spurge and we know that and we have high costs of weed control. We have to take care of property—in some cases seed cover crops—in opposed to farms that are all in pasture and have no fences and have no weed problems, in which case there would be no such costs for farm care.

So we are evaluating the farm situation on a case-by-case basis for the costs that will be required from the Government to take care of that property. And the farms will vary from one to another.

Mr. FIBELSTAD. 147 times difference from one county to another?

Mr. ZIMMERMAN. Well, I do not think that you are talking about from one county to another. You are talking about one farm to another.

Mr. FIBELSTAD. One farm or one county, what is the difference?

Mr. ZIMMERMAN. Well, there is a difference from one farm to another.

Mr. FIBELSTAD. On every one of these particular pieces, it has been diversified North Dakota farming average as is in their respective communities. No leafy spurge on any of them in any gross amounts. Every one is a mixed livestock and crop unit.

Senator CONRAD. Well, I must say this raises a question. At least when we go from $.01 per acre month to $1.47 per acre month, with a lot of differences in between—$.13, $.41, $.67. At least on the face of it, it certainly raises a concern I would think. I would hope that—Percy, if you have the specific cases——

Mr. FIBELSTAD. I do.

Senator CONRAD [continuing]. If you could share those with Bob and Ralph. I would very much appreciate you having a chance to look at them and providing for me an analysis of why you see the differences existing, if they are based on your appropriate analysis, or if there is a problem let us deal with the problem.

Mr. ZIMMERMAN. We would have to look at each one.

Senator CONRAD. Sure. I appreciate that. Any further comment?

Mr. FIBELSTAD. The only thing, the other comment I would have, is this big difference in the figures affect the net recovery buyout substantially.

Senator CONRAD. Yes. It would have a dramatic effect.

Mr. FIBELSTAD. Yes. I had one other one. I could not find it yesterday when I put this together. Two farms happened to be almost to the acre identical. They were 640 acre farms, and cropland and grassland on the two of them were almost to the acre. I think it was 2 acres difference on the cropland. Those two had a difference of—the other one was even much higher than $1.47. Something—I do not have it figured out in a per acre month, but I could not find the piece of paper——

Senator CONRAD. All right. Thank you, Percy. I just want to publicly thank you as well for all the work that you have done in this area. There are a lot of unsung heroes across the State of North Dakota and I think you are certainly one of them.

Mr. FIBELSTAD. Thank you, Senator.

Senator **Conrad**. Yes.

STATEMENT OF DWIGHT KIEFERT, FARMER, VALLEY CITY, ND

Mr. **Kiefert**. My name is Dwight Kiefert. I am a farmer in North Dakota. I have a question——

Senator **Conrad**. Could you just spell your name for the assistance of reporter, please? Thank you.

DEFINE THE TERM CALLED "CAPITALIZATION VALUE"

Mr. **Kiefert**. K-I-E-F-E-R-T. I have a question for Mr. Leet. I would like him to define the term called "capitalization value."

Mr. **Zimmerman**. Capitalization value? The capitalization value, as far as Farmers Home Administration is concerned, is a term that we apply to properties and sale of inventory properties. Capitalization value is evaluating income which can be generated from a property and talking in terms of its ability to generate income and be profitable.

Mr. **Kiefert**. OK. My definition is worded "by farming the property." That is supposed to be a Federal regulation? When FmHA figured out my program, they rented my land out, rented my house out. How can they do that?

Mr. **Zimmerman**. Excuse me?

Mr. **Kiefert**. OK. When they figured my capitalization value, they did not farm the property. It is clearly defined as farming a property, generating an income as a family unit. OK.

When they figured my capitalization value, they rented the farm out to an existing farmer and rented my house out to a city dweller. How can they get by with doing that?

Mr. **Zimmerman**. First of all, when Farmers Home Administration does its appraisals, there is a capitalization page in the appraisal, and that capitalization page takes into account income which can be generated from the property.

Whether the property is—it is used in terms of crop production or whether it is used in terms of lease, those two figures, the income, you would think in many cases would be very close. And you are still talking about income—income potential in terms of value of the property.

But I think in talking about renting or leasing the property out is a separate issue. Farmers Home Administration does have inventory—property in inventory and there is the potential for leasing the property out.

Mr. **Kiefert**. That is what I am saying. There is a big difference between renting the land out for—the definition clearly states "generated from farming property." They are talking about a family unit, I believe. But this is a big difference if you are going to rent it out or farm it. There is going to be two different formulas.

Mr. **Zimmerman**. Income generation from the farm, buildings are part of the farm. Also, in terms of doing capitalization approaches on farms, you need to—we need to take into account situations in an area. In certain cases, property will also be in CRP. So all that needs to be input.

Mr. **Kiefert**. If I want to appeal this, who do I appeal it to? Who hears it?

Mr. **Zimmerman**. I think in your situation, you would have to deal with your local county office to determine where you are in this whole process. We do not know.

Mr. **Kiefert**. You are familiar with the game board provided by legal counsel? I am on step 20. I have asked who is going to hear my appeal and they do not know.

Mr. **Zimmerman**. I am not familiar with step 20 on the game board.

Mr. **Kiefert**. Are you familiar with exhibit K?

Mr. **Zimmerman**. Exhibit K?

Mr. **Kiefert**. Yeah.

Mr. **Zimmerman**. Exhibit K would indicate to you that you have preservation rights. Is that not correct?

Mr. **Kiefert**. No. I have sent five certified letters to my County Supervisor requesting information on leaseback/buyback program. All I have gotten back from him is exhibit K, which is a waiver of my rights for the programs that I am asking information on. That is all I have gotten back from him.

Senator **Conrad**. Boy, you have been moving right along if you are on step 20 already.

Mr. **Kiefert**. Yeah.

Senator **Conrad**. Step 20 says that FmHA will automatically consider you for preservation loan servicing. You receive exhibit K and an attachment which is a waiver of your rights. Do not sign the attachment if you want preservation loan servicing.

That is just to define for the audience here where the gentleman is in the process.

Mr. **Zimmerman**. If the individual received exhibit K, that is the offer of leaseback/buyback, or it is an indication anyway that leaseback/buyback is going to be considered. And if leaseback/buyback is going to be denied, then there would be a denial at some point along the way. Apparently we are not that far.

As our exhibit K with its attachments would indicate, if you are not interested, that is what the waiver is for.

Mr. **Kiefert**. I have that exhibit K along. It is a waiver of the rights that I am asking information for. I gave Mr. Lynn Clancy a copy of my certified letters. But I have asked for this information since March about the buyback program, how to determine eligibility, and I have not received anything on any of it.

Now my time is running out, I believe, on my recovery buyout program and I still have no information on the buyback that I requested several times.

Senator **Conrad**. Well, perhaps if we could get the specifics of your case, I am sure Bob would be willing to take a look at this and try to get an answer to the gentleman's questions.

Mr. **Zimmerman**. We would need specifics.

Senator **Conrad**. Yes. If we can get the specifics provided to you, you could get an answer to the gentleman's question?

Mr. **Zimmerman**. (Nods head.)

Senator **Conrad**. All right.

Mr. **Kiefert**. That is pretty much what I am saying. I have been trying to get the information but have been running into a wall. I think a lot of farmers in our area are in the same type of situation.

[The prepared statement and attachments of Mr. Kiefert appear at the conclusion of the hearing.]

Senator CONRAD. OK. Others who have a question or a comment. If not, it is my intention—all right. Yes, sir.

STATEMENT OF GLEN LAWLAR, WATFORD CITY, ND

Mr. LAWLAR. I am Glen Lawlar, Watford City, North Dakota.

Senator CONRAD. Welcome, Glen.

WORKLOAD AND REGULATIONS

Mr. LAWLAR. I would like to comment. Mr. Leet, and I believe Mr. Johnson, the Administrator, both made comments about the workload of FmHA. That goes back, Senator, to your Washington, DC. Who drew up all these regulations, if they are so cumbersome it takes a lawyer to understand them, when a more simple answer would do the job?

Senator CONRAD. Well, I tell you, I wish I could tell you that the way Washington works you get simple language, but I have never seen any simple language come out of there. [Laughter.]

First the Congress passes a law, and then of course the agency that is assigned the implementation writes the regulations. I could not agree with you more. It is extremely complex and cumbersome.

Mr. LAWLAR. Well, getting back again to out here. I am from the western part of the State. I have had meat, mashed potatoes and vegetables and fruit, a cup of coffee, that is a meal. I go to Washington, DC, I will probably get that, but home cooked maybe cost me a dollar and a half. I go to Washington, DC for a meal and I will probably get a menu as long as this (indicating).

Senator CONRAD. It will cost you $25 in Washington. [Laughter.]

Mr. LAWLAR. That is about right.

Senator CONRAD. To boot, they broke into my house last night. You know, they tried twice before. Last night they made it. You are doing a lot better out in western North Dakota, I will tell you that. You are a lot safer.

Mr. LAWLAR. For 40 years my dad—we lived in the same place there. We have not locked it up. They do not have to break in. They could walk in. [Laughter.]

Senator CONRAD. OK. Oh, yes. Right here. Delores. I want to thank you for the testimony that you submitted, too.

STATEMENT OF DELORES TARBELL, DAKOTA RESOURCE COUNCIL, JAMESTOWN, ND

Ms. TARBELL. Thank you. For the record, my name is Delores Tarbell and I represent Dakota Resource Council.

Before I get to this question, the point that we had made about FmHA denying the borrower the right to appeal, that just did not come from out of our head. That came from the Center for Rural Affairs. Because they had called our staff and said, "we have people in North Dakota calling us saying how come North Dakota FmHA does this?" So that is just for the record.

But our question's on the DALR$ program.

Senator **Conrad**. Before we get off that point, maybe you could just repeat for us at what point they were denying the right to appeal.

Ms. **Tarbell**. OK. The borrower that we talked to, he was from Rolla. We had gotten a hold of him. And he said that he had gotten a packet. He was delinquent. He said: Yes, I was delinquent. I got my packet in in my 45 days. He said FmHA returned their offer. He was not allowed to appeal that offer. They told him he had to go through liquidation or foreclosure and then appeal that.

Senator **Conrad**. Bob.

Ms. **Tarbell**. And he called the Center for Rural Affairs. The Center for Rural Affairs did some checking and found out that, while FmHA should not be able to do that, that it had come down from the North Dakota FmHA level.

Senator **Conrad**. Do you want to respond to that, Bob or Ralph?

Mr. **Zimmerman**. I can try. It is difficult to respond to it because, again, we do not have a specific case and we do not know exactly what happened.

But it sounds like the case mentioned is that Farmers Home Administration did make an offer for restructure.

Ms. **Tarbell**. They did, but it was unreasonable and he would not have been able—if he made the payments, he probably would not have been able to eat. I mean, it was unreasonable.

Mr. **Zimmerman**. OK. I guess that we are talking about a point that we have not yet made an adverse decision. The decision that was made in running the DALR$ program and so on was that Farmers Home Administration would be able to restructure on the basis of the plan that was submitted. We would have to go with that because the instructions say that Farmers Home Administration will maximize recovery while still keeping the borrower on a feasible farm.

So if the borrower does not want the servicing alternatives, which are said to be in line for approval, but that borrower does not want those, there would still be a point at which appeals could develop. But we have not reached that yet in our steps along the way.

Senator **Conrad**. Is that not, though, an adverse determination in the sense of if you are a farmer and you get back an offer that you cannot live with and so decline the offer, in effect, you have had an adverse determination made. What right of appeal do you have if you then say as a farmer, I cannot handle your offer?

Mr. **Zimmerman**. The way the system and the instructions are outlined is that we go through this process step by step. I am assuming from what was told that the DALR$ program did come up with a program that was feasible for repayment and for some kind of a primary servicing action to be approved. That in our mind would be a favorable decision. It would almost sound like the primary servicing alternative which was offered did not meet with the approval of the borrower. Maybe they did not get what they were expecting. In many cases we know that borrowers want write-down because write-down exists. Rather than rescheduling and reamortization, that, if it is possible to pay less debt, then that is something that they would like.

So our programs and our system is set up such that we would offer primary servicing which would offer maximum recovery to the Government yet keep the farmer on the farm. And that being a favorable decision—it is still favorable in the minds of Farmers Home Administration. And if the borrower disagrees with it and does not take it——

Senator CONRAD. Is that handled the same way in every State?

Mr. ZIMMERMAN. The system under 1951-S, which is our servicing regulation, is the same, that we go through the DALR$ program, we go through the whole system, and once we arrive with the DALR$ program at a determination that one of the primary servicing actions will work, we send what is called exhibit F. Exhibit F offers the borrower the primary servicing alternative that had developed.

Senator CONRAD. That has the least cost or the greatest recovery for the Government, that is the one that is sent?

Mr. ZIMMERMAN. That would be correct. Exhibit F is the one that explains that Farmers Home Administration has approved primary servicing.

Mr. DISSELHORST. Mr. Chairman, may I ask a question just for clarification?

Senator CONRAD. Sure.

Mr. DISSELHORST. Is there a point in this process at which the farmer and Farmers Home Administration can get together and negotiate the offer that has been made?

Mr. ZIMMERMAN. If I—we are ready to respond to that. We will recall from the law and from the regulation that the determinations that are made under these servicing authorities are to be made on the basis of history, on the basis of potential, on the basis of what can actually be done.

And those—and that is why the DALR$—that is one of the reasons the DALR$ is there is that not only is the Government, through the Farmers Home Administration, working for survival of the farmer but also maximum recovery on those loans that are out there.

And we are not talking about individual negotiation. We are talking about basis of history and basis of the most real numbers that are possible.

Senator CONRAD. Bob, might I just follow up? Let me ask you this: The interpretation is that it is not an adverse decision if you make a determination that primary loan servicing is possible. What if the farmer concludes that some of the numbers that have gone into that calculation are wrong? That would be an adverse determination subject to appeal, would it not?

Mr. ZIMMERMAN. That is correct. And we cannot arrive at that point if the borrower chooses not to take the primary servicing alternatives which are offered or alternative which is offered. Then whether the borrower would like that or whether he would not, there would come a point at which there would——

Senator CONRAD. Like an appeal.

Mr. ZIMMERMAN [continuing]. Like a meeting and an appeal.

Senator CONRAD. Let me pursue this one step further. If a farmer were offered—let us make it very simple. He was offered option

"A" as the loan servicing option when option "B" would be more attractive to him.

Is there a point at which he can appeal the determination by FmHA to offer "A" instead of "B" if he believes the offer was based on incorrect numbers?

Mr. ZIMMERMAN. Ultimately we would get to that point. But the way that the program works is, again, the Farmers Home Administration is making the determination not only for the continued operation of the farm but the regulations and the law also indicate maximum recovery for the Government.

Senator CONRAD. Absolutely. I understand.

Mr. ZIMMERMAN. And so that is what the DALR$ program is supposed to tell us, and that is the maximum recovery yet feasible continuation are the alternatives that we are to offer to the borrower.

Senator CONRAD. But we are all human and we make mistakes. If FmHA makes a mistake in that determination, or if the input into the DALR$ was incorrect, you know, I do not care what the program is, garbage in/garbage out, one reference was made here.

I mean, if you have a DALR$ calculation that has some incorrect numbers in it, it gives an inappropriate result, there ought to be a right to appeal that. Because that, then, becomes an adverse determination in the sense it precludes the farmer from getting a result he would otherwise be entitled to.

Mr. ZIMMERMAN. First of all, if there is an obvious mistake made, I would think that we would rerun the DALR$ program right away. We have done that in several cases.

Senator CONRAD. OK.

Mr. ZIMMERMAN. The other thing is that yes, if the borrower sees that the alternative which is offered is not acceptable to him, they are not required to take it. And they will have the opportunity for the meeting and they will have the opportunity for the appeal. So this thing has an opportunity to surface and to be resolved.

Senator CONRAD. All right.

Mr. JOHNSON. Senator, could I follow up briefly on that point?

Senator CONRAD. Roger.

Mr. JOHNSON. Just for clarification for my own use as Administrator of the program, Bob, what you are saying is that if primary loan servicing is offered and the borrower chooses to do nothing with it, I know I have run into cases where they have immediately received attachments 9 and 10. And I think we have laid that issue to rest earlier and decided they should be receiving 5 and 6. Right?

The question is when they check the informal meeting and the appeal, assuming they go through the appeal process on 6 and the result of that appeal is that they win, what happens? Does that mean that they then get to put their own numbers in and run a new restructure proposal? I mean, that is what we are appealing, isn't it?

What happens if they win and what happens if they lose? That is the question I have. I am assuming if they lose the appeal they are reoffered what they were first offered. Is that right?

Mr. ZIMMERMAN. OK. Now, if they lose, you are saying we would go backward?

Mr. **Johnson**. I am assuming that what they are appealing is your offer to restructure the loan. They are saying they do not like that offer. OK.

Mr. **Zimmerman**. OK.

Mr. **Johnson**. So if they lose that appeal, they are reoffered that same thing. No?

Mr. **Zimmerman**. Boy, I will tell you there many steps to this thing and I would want to be awfully sure that I have looked it up and would be able to respond with a correct answer. I guess I am not able to say with all certainty right at this point exactly whether they would be reoffered or whether they would not. I think that we need to research specifically that issue.

Mr. **Johnson**. Senator, I think that is a real key point because——

Mr. **Zimmerman**. The consensus is they would be offered the same thing.

Mr. **Johnson**. They would be reoffered that same proposal? OK.

Mr. **Zimmerman**. Yes. These guys see it that way.

Mr. **Johnson**. You are not real comfortable and I would not be either if I were in your shoes. It is a technical point, but it seems to me it is key to this issue of what happens to that borrower.

Senator **Conrad**. It would seem to me that would be a logical outcome. Obviously it has more delay, but it would seem to me that would be an obvious and rational outcome.

Mr. **Zimmerman**. It would be seem to be right.

Mr. **Johnson**. So if he loses, he gets reoffered. The second part of the question is if he wins the appeal, then what happens? Then do they take his numbers and put them in the DALR$? What happens in that?

Mr. **Zimmerman**. Well, I think that it would depend on specifically what was appealed.

Mr. **Johnson**. What is being appealed is that offer.

Mr. **Zimmerman**. But there is something underlying there that the borrower is disagreeing with something.

Mr. **Leet**. He would have to come up with his proposal and then the hearing officer would have to decide which is right. So he had already run the DALR$ then at the time of the hearing.

Mr. **Zimmerman**. It would sound to me like the appeal hearing officer would indicate that the point that the borrower was bringing up was then correct and ours was wrong and we would rerun the DALR$ program. That would be my first guess.

Senator **Conrad**. All right. Delores.

Ms. **Tarbell**. This goes into the DALR$ program, too, then. The DALR$ program assumes that most commodity prices will decline approximately 20 percent over the next 5 years while production expenses will increase by 20 percent. This appears to be the figures used to calculate whether a farm family will be viable over a long term.

So our question is if FmHA is actually using these projections, why are commodity prices assumed to drop that much and why are costs expected to go up that same 20 percent? It seems you are starting with a 40 percent deficit. So how is a borrower supposed to meet that expectation?

And then also in the DALR$ program, if you are going to be displacing somebody off the farm—and I am not saying that this is the intent but this may be the outcome—what is the cost to society? Because this farmer is not going to be a farmer anymore. Is he going to go into town and get a $3.50 an hour job?

Mr. **Zimmerman**. Well, the second question, I do not feel that I have an answer for. The first question deals with the long-term planning crises. And the long-term planning crises were based on material provided to all State FmHA offices from a Washington survey company. I do not recall the name of that company, but——

Senator **Conrad**. Is that really the prediction, that prices are going to decline 20 percent?

Mr. **Zimmerman**. The commodities are listed and there are some commodities that decline quite a bit. I do not remember which ones are which, and I do not recall the name of the survey group that provided the material either. But there is a long-term planning survey information that is provided for long-term plans.

Senator **Conrad**. Well, we are learning things here today. [Laughter.]

[The prepared statement of the Dakota Resource Council appears at the conclusion of the hearing.]

Senator **Conrad**. Yes, sir.

STATEMENT OF ROLAND KADOUN, FARMER, HANKINSON, ND

Mr. **Kadoun**. My name is Rolly Kadoun from Hankinson. I have a couple of questions. I was informed that this restructuring, that they had up to a 5-year deferral on your payments.

Mr. **Zimmerman**. That is correct.

Mr. **Kadoun**. And he tells me that some new regulations come in and said that it is not there anymore, maybe you would get 1 year at the most.

Mr. **Leet**. Still a 5-year deferral.

Mr. **Kadoun**. It is?

Mr. **Leet**. Yes. It is a possibility.

Mr. **Kadoun**. What?

Mr. **Leet**. That is maximum.

Mr. **Kadoun**. But this guy told me, from FmHA, there is not a 5-year deferral anymore.

Mr. **Zimmerman**. Regulations call for a 5-year deferral at this point in time, but maximum.

Mr. **Kadoun**. I have another question. My restructure went from one office into another county office. Is that feasible? Is that right?

Mr. **Leet**. Did you move?

Mr. **Kadoun**. No, I did not.

Mr. **Leet**. It should be in the county office where you live.

Senator **Conrad**. Do you live in one county and farm in another county, sir?

Mr. **Kadoun**. No. I work out of the Wahpeton office but went into the Forman office.

Mr. **Leet**. Well, we would have to check on that. I do not know why——

Senator **Conrad**. I think there was some sharing of workload.

Mr. KADOUN. I understand that. But the guy down in our country, he took a whole bunch out of Wahpeton to Forman. And we feel that—well, we know the Supervisor in Wahpeton but we do not know the Supervisor in Forman, and we hear he is kind of a hard cookie. [Laughter.]

Another question I have is if FmHA——

Senator CONRAD. Let us get an answer to that question before we go to the next one, sir. I think Bob may have a——

Mr. ZIMMERMAN. Right. Just to advise that we did a lot of sharing of work. Assistant County Supervisors were moved around. In that particular area of the State, one of our assistants was detailed to the county office in Wahpeton and——

Senator CONRAD. Let me ask this question. Do you have a right to have your County Supervisor—let us just say in some cases—I would guess in most cases people would not have an objection if it is another county office. But this gentleman has an concern about that situation. Does he have a right to be heard in his county?

Mr. LEET. Yes. The loan should be serviced in the county where he lives. And just because somebody comes in and does the work does not mean that the originating County Supervisor is still not responsible for decisions on that loan.

Mr. KADOUN. Well, we feel that—not just me—that maybe if this is a hard-nosed guy down in Forman, which I do not know and I get along good with the one in Wahpeton, if this guy that does the work goes off and takes the papers down there and gets advice from that County Supervisor, which he does not know us at all, we do not feel it is right. I am sure that is——

Mr. LEET. What we do is we have to shift our personnel to where the most problems are. If we—we have assistant County Supervisors as well as the County Supervisor. And these assistant Supervisors are younger people who are learning to be a County Supervisor. And when we need help in another county, we shift them over there. That is how we equalize the workload. We will have to continue to have to use other help as we need to get the work done.

Mr. KADOUN. I understand that. As long as he does not go by the advice from that County Supervisor.

Mr. LEET. I think he has to go by the advice—all the County Supervisors have the same regulations and hopefully—I know that sometimes there is inconsistencies but they should not be. We should work and work for consistent delivery of the program between counties.

Mr. KADOUN. One more question then. Just say FmHA restructures loan, or writes your cattle down or your land. I have been told to ask the question, what happens then if they restructure—write—or give you some of that money? Can the Internal Revenue come in the back door and get you anyway?

Mr. ZIMMERMAN. There is possibility for some Internal Revenue Service effect on what has been done. And we do not know what that effect might be.

Mr. KADOUN. If that would be just interest accrued on top of the main principal, then maybe not?

Mr. ZIMMERMAN. We know that there is a possibility, and we would advise everybody to contact their attorney or tax consultant and evaluate very closely.

Mr. **Leet**. We cannot give that kind of advice to you because we do not know.

Mr. **Kadoun**. OK.

Senator **Conrad**. You are absolutely right. Anytime there is debt write-down, there is the potential for a tax consequence, because a debt write-down can be seen as a situation that results in income for tax purposes to the recipient of the write-down.

So the advice that they are giving is absolutely correct. One should check with an accountant, credit counselors, or someone that can tell you what the effect will be.

Mr. **Kadoun**. Thank you.

Senator **Conrad**. You bet. Yes, ma'am.

STATEMENT OF JUDY HOFF

Ms. **Hoff**. Hi. I am Judy Hoff. I just want to comment we did have an error in the offer that was made to us. I think because of the lack of trust that has happened in the past between Supervisors and people, you know, we did not know how to go back, really, and approach them.

But we did. And we went back and said there is an error in our appraisal. There was a transition of figures in our plan by FmHA. Both of them were corrected in the office—the appraisal—you know, called us again. They were corrected within our office and the plan given was then acceptable.

But I just looked at somebody else's the other day and there were very blatant errors in his—well, both in the Farm and Home Plan and in the rest of the DALR$ program. They were very blatant errors. He did not have the ability to catch those errors because he did not know what was supposed to be on those lines. And we thought——

Senator **Conrad**. You are talking now about the borrower?

Ms. **Hoff**. The DALR$ program.

Senator **Conrad**. Yes. And the borrower did not——

Ms. **Hoff**. The borrower did not know that——

Senator **Conrad**. Yes.

Ms. **Hoff** [continuing]. And so he could not say there was an error in here. And there should be a way within FmHA, like we did, that you can go in, sit down, and say: "I think these figures are wrong. Can we talk about them?" before you have to go through an appeals process, before you have to go through mediation. Before you have to go through all those time consuming and expensive things, there should be a way that you can come in and sit down. We were able to do that, and within a week everything was resolved.

Senator **Conrad**. OK. Bob or——

Mr. **Leet**. Obvious errors should be resolved in the county office.

Ms. **Hoff**. But, Mr. Leet, some people do not know what is supposed to be on the DALR$ program so they do not know it is an obvious error. You know, if they cannot identify the error, it is a real problem.

Senator **Conrad**. What I have heard them say here this morning, and again we understand these FmHA offices, the County Supervisors are swamped, but we understand the sentiment here, the feeling is, of the Administrator, and the leadership, that a person would be able to go in and visit about this if they had a question. Am I right, Bob?

Mr. ZIMMERMAN. Yeah. I believe so. If there is questions along the way, we would want to answer questions, certainly. And if there are errors presented and they come to our attention, certainly we would like to correct them.

Senator CONRAD. One other observation I would make is that FmHA cannot do everything for everybody. I mean, people do have to be involved in their situation. If they are not able to do it themselves, they have to get somebody that can help them through this process, so that if there are errors they can go back.

FmHA is not perfect. None of us are. We are going to make mistakes. But people are going to have to be sufficiently involved in their own affairs to get somebody to help them with this.

Karl.

STATEMENT OF KARL LIMVERE, NORTH DAKOTA FARMERS UNION

Mr. LIMVERE. Karl Limvere of North Dakota Farmers Union. I think we need to reemphasize that there are two rights. That they have the right to a meeting with the decisionmakers. They have that right at any time when a decision is being made. Then they also have the right, whether they use that or not, the right for appeal.

And I think part of what I am hearing is that people are not understanding that they have that right for that initial meeting. That is where we should resolve those mistakes.

Senator CONRAD. Absolutely. All right. Yes, sir, up in back.

STATEMENT OF AVONE KUKLA, FARMER, GRASSY BUTTE, ND

Mr. KUKLA. My name is Avone Kukla from Grassy Butte. I am a farmer. I have some questions for Farmers Home Administration.

First question I want to ask is when you work with a PCA corporation, lending agency, and the Farm Credit Service, and the last results, when the PCA closes out on your hometown area and you go to FmHA, but yet you try to borrow money from another corporation, and FmHA, before you can even begin to process anything, says you are incapable of making high and low interest rates. Now, I wonder why a Supervisor advises you that?

Mr. ZIMMERMAN. I did not understand the question.

Mr. LEET. Repeat the question.

Mr. KUKLA. The question is when you want to borrow money—say if you want to go through a—you know, they have another corporation that was loaning money—I forget the name of it right off the top (SBA). But what they were saying is that, OK, you are incapable of meeting the high interest rates and the low interest rates, and yet the FmHA does not know what you are doing.

You have made your Farm Credit Service bank rates. You met them. You met PCA before. OK. Suppose you got hailed out or a drought and you go to FmHA because you have no resort to borrow money for the following year. FmHA says, well, you cannot meet the high rates and you cannot meet the low rates.

Senator CONRAD. You cannot meet either one?

Mr. KUKLA. Neither one.

Senator CONRAD. Your operation will not allow you to pay the high interest rates and not even be able to pay on the low interest rates. Is that——

Mr. KUKLA. That is correct, Senator Conrad.

Senator CONRAD. OK.

Mr. KUKLA. But the question is—is why do they defeat you before you begin your process?

Senator CONRAD. Did they discourage this individual from even applying?

Mr. KUKLA. Yes, they do.

Mr. LEET. We have encouraged people to apply for a loan because that is the only form that we really have to make a determination on eligibility.

Mr. KUKLA. Right.

Senator CONRAD. I think it is fair to say, and I do not want to speak for FmHA, no one—no one—should be dissuaded from applying. Everybody has a right to apply and to go through the process.

You know, this happens from time to time. Somebody really is out of line if they have said that. I think that is the honest answer, that a person is out of line who tells a borrower not to apply.

Mr. KUKLA. Next question I have is after we have this dispute with the County Supervisor in my hometown area, we have come down and talked to Mr. Leet for a little bit here in Bismarck, and somehow or another got back to the County Supervisor and, boy, did he chew me from one end to the other. He read me my rights for about an hour and 45 minutes. What kind of a lending agent is this? Is this allowed?

Mr. LEET. He should not—you should have a right to come and see me and he should not be threatened by the fact that you do so. In fact, we also make a point to call the County Supervisors and tell them of a visit to my office. And certainly he should not be angry. Human nature sometimes gets the better of people when they feel you go behind their back. But we tell our supervisors do not worry about that.

Mr. KUKLA. The next question I have is why, when you come to fill out those applications the first year, why do they want you to keep renewing them every year? And I can bring the old contract. What are they up against? Why are they making you borrow more—more than you want? Why is FmHA making you build buildings that you do not want on the place and putting you further in debt?

Mr. LEET. We should not be borrowing more money than you want, really. I have to agree with you. It has happened in the past where our regulation and the policy was to provide adequate housing for family members.

And sometimes when the farmhouse is really not fit to live in, we say, OK, you have a choice of building a house, renewing that house, or not having a loan. And I would say in some cases where things have gone bad, the cost of that house has caused a failure for the farmer.

That is the situation we are in. Are we going to allow our brothers to live in substandard housing? Certainly they cannot have both. Then maybe we should not have made the loan to start with.

Mr. **Kukla**. The question also, we are—the house was built fairly new in 1970, so there should not be that much we have to add to rebuild. But they are telling us that we have to have that new in the house, this new in it, when we do not need that. We are trying to make a living like everybody else is—all our farmers from our area, or all around.

OK. The question is that it seems to me, and I am seeing right along with the county ASC that FmHA does—the question comes up to lots of people, why is FmHA taking their deficiency payment disaster when they are trying to make payments meet?

The question is, also, at the same time you wonder why you do not get paid. Why are they holding their paperwork up? What is going on behind our backs? I would like for Senator Conrad to kind of ask this question for the public too, because I think a lot of us farmers are concerned about this.

Mr. **Leet**. When you develop your Farm and Home Plan, you decide what payments you are going to make and what income. And you, in advance, agree to use crop payments to pay the fertilizer company or you decide to dedicate other moneys to pay this bill. And that is—you have already agreed to do that in the Farm and Home Plan. And I am thinking that possibility, we should follow that. I do not think anything is going on behind your back that I know of.

Mr. **Kukla**. OK. That is something that you do not know that we do know. [Applause.]

Senator **Conrad**. Wait. Understand, this is an official Senate hearing just as if it were occurring in Washington, and we cannot allow outbursts. It is just not allowed under the Senate rules. So please, I hope you will respect those rules and respect everybody who is here. I mean, we have to treat each other politely. All right.

Mr. **Kukla**. Thank you. Next, I have to ask, why do these lending agents make you sign those papers before they look at your previous year's paperwork?

Mr. **Leet**. I do not know what papers you are talking about.

Mr. **Kukla**. All those forms that they make you sign every year—your workload, your schedule, how you are going to pay your debts, and so forth—why sign all these forms in advance before you go over the previous year's papers?

Mr. **Leet**. Normally, what we should be doing is do a year-end analysis affirming what you did in the past, as far as the income and expenses, to analyze how—what you have accomplished in the past. Once the analysis is made of your past year's operations, then we should proceed to work up the next year's loan. That is the normal procedure and reasonable procedure.

Senator **Conrad**. Let me just indicate that we are going to have to break. We are now at 1 o'clock. So we are going to have to take a break for two reasons: one, I am starved; number two, the court reporter is going to wear down on us. So let us have one more question and we will have the answer, and then we will come back in 45 minutes and resume.

Mr. **Kukla**. Can I ask questions later? I will close for right now.

Senator **Conrad**. OK.

Mr. **Kukla**. Thank you.

Senator **Conrad**. All right. We will break, and we will try to come back at 10 minutes to 2 and proceed with the rest of the hearing. The capitol lunchroom, I am told, is open for those who are looking for a place to eat.

I want to thank all of the witnesses who have participated this morning. I think this has been a very productive discussion. Thank you very much.

[Recess.]

AFTERNOON SESSION

Senator **Conrad**. I am going to ask Bruce Bohnsack, James Link, Lyle McLain, Cliff Ferebee, and Bill Muhs to come and be part of our second panel.

It is my intention, with this panel, to have everyone provide a summary of their testimony, and once we have gotten through the witnesses, to then take questions and have the interchange occur. That will help us move more quickly and get through the program.

So without further ado, I would ask Tom Disselhorst, an attorney from Bismarck, to proceed with his testimony, and then we will go to Bruce Bohnsack, the Director of Seventh District, and our other witnesses.

STATEMENT OF THOMAS M. DISSELHORST, ATTORNEY, BISMARCK, ND

Mr. **Disselhorst**. Thank you, Mr. Chairman. I guess I am surrounded by the proverbial enemy today, but that should not be a problem.

THE DISCRETION OF THE LENDER IS SO GREAT THAT THE BORROWER SEEMS RATHER PUNY IN COMPARISON

Oftentimes when I represent farmers I feel like I am looking through a telescope the wrong way. The reason for that is that the discretion of the lender is so great that the borrower seems rather puny in comparison.

So I would like to touch on three elements that I touched on in my prepared testimony concerning the discretionary powers of the lenders, both FCS and Farmers Home Administration, and why I think that, in general, they seem to be slanted away from the concerns of both the paying borrower—as one of the persons who is going to testify shortly talks about—and the distressed borrower.

DISCRETION SOMETIMES LEADS THE LENDER ASTRAY

There are three areas where I think discretion sometimes leads the lender astray. The first one probably comes when the borrower is given notice of a particular lending program.

RELATIVE UNAVAILABILITY OF THE DALR$ PROGRAM

We have heard today already about the relative unavailability of the DALR$ program. I am quite certain that it was not pointed out earlier, that it was necessary for a Farmers' Legal Action Group out of St. Paul to file a Freedom of Information Act case in order to get DALR$ released by the Farmers Home Administration. After, of course, it was released under that act, Farmers Home Administration quite willingly provided it to other folks. But it took that kind of action before that program was released.

BORROWERS WERE NOT GIVEN THE CRITERIA BY WHICH THEIR RESTRUCTURING PLANS WOULD BE EVALUATED

Unfortunately, my experience with Farm Credit Services is even worse. Borrowers who were given the packets last January and February of 1988 were not given the criteria by which their restructuring plans would be evaluated.

We found out later that Farm Credit Services had a nice worksheet that they had developed for determining the costs of foreclosure and the costs of restructuring. But the borrowers were not given an inkling of that until much later.

A PROBLEM IF THE BORROWER DOES NOT TALK TO THE LENDER ABOUT WHAT IS AVAILABLE

Now, of course, I am sure someone will point out that borrowers had the opportunity to go in and talk to their lender, and sometimes they did not avail themselves of that opportunity. And that certainly can be a problem if the borrower does not talk to the lender about what is available.

But those borrowers who did go talk to the lender certainly were not given the worksheets that were later used to determine whether the cost of foreclosure were less than the cost of restructuring, which then determined whether or not their restructuring program would be accepted by Farm Credit Services. In fact, that seemed to be the only criteria as to whether their loans would be accepted were those worksheets that were used.

We found it difficult—I found it difficult, at some hearings that I went to, to even get copies of those worksheets—at appeal hearings—and certainly I rarely had a chance to have those items before the hearing was commenced.

RESTRUCTURING APPLICATION CRITERIA IS VERY CRUCIAL

So I think it is very crucial, both with Farmers Home Administration and with Farm Credit Systems, that the criteria upon which the restructuring application is going to be evaluated is made available at the time the notice of the application possibilities are submitted.

That is just absolutely crucial. Otherwise, you do not have an informed way of determining how to structure a plan. It just stands to reason if you do not know how the people are going to evaluate you, you cannot figure out how to make the plan work. I think that is just fundamental.

That is an area of discretion, I say, because the lender could provide that information. We hear a lot of talk about how Farmers Home Administration is too busy to communicate, and all that kind of folderol. I think it is folderol because I believe you can submit that kind of information along with that application package.

A REASONABLE EXPLANATION CAN BE MADE OF THOSE WORKSHEETS

It is not difficult. A reasonable explanation can be made of those worksheets so that people could understand how to plug the figures in them and make them work.

AREA OF DISCRETION IS APPRAISALS

Another area of discretion that I feel works to the detriment of the borrower is appraisals, from the area of appraisals.

I was talking with Mr. Johnson at lunch time. We both agreed that the basis for much of the discussion about restructuring, whether it be with Farmers Home Administration or Farm Credit Services, rests with the appraisal of the property, whether it be real property or chattel property.

That appraisal is most often done by an appraiser hired by Farmers Home Administration or Farm Credit Services. It is rare that the borrower gets the opportunity to select an appraiser to do that appraisal and then have a meeting of the minds, so to speak, as to which appraisal will be accepted.

In fact, in a case that I had last spring, I specifically asked for what I thought were the rights of my client under our Agricultural Credit Act to get an independent appraisal, under 4.14(d) of the act, I think is the section, subparagraph "D", and was refused.

The argument I was given is that, oh, that is only available—an independent appraisal is only available if the borrower is going to put up additional collateral, which is a rather strange reading of that section.

As it turns out, there was a technical correction made in the Technical Corrections Act of 1988, the Ag Credit Act of 1987, which I think cleared up that dispute a little bit, although I am not sure that it is still possible to get independent appraisals.

Even when you do get an independent appraisal, it is an appraiser that is selected, basically, by either Farmers Home Administration or Farm Credit Services. So you still do not have much a choice.

This causes, I think, a real problem, because if you are being hired by those agencies to do an appraisal of land, you are going to want to continue to get business from those agencies.

I have been in enough bankruptcy hearings to know that if you hire an appraiser and you are the debtor, you are going to get a lower appraisal, depending on what you are after, and the other side is going to get a higher appraisal. It just stands to reason that is going to be the way it happens.

SUGGESTION TO ALLOW THE BORROWER TO SELECT AN INDEPENDENT APPRAISER

So I would like to make a suggestion, perhaps as a correction to the act, if there could be a way of allowing the borrower to select an independent appraiser to assist in the process of determining what the value of real property or chattel property really is. I think that might be a way to come to a meeting of the minds on that matter.

Now, of course everybody will say that appraisers are professionals. They do this for a living. They are not necessarily biased. They use comparative sales methods which are accepted by the courts and by the industry. And certainly all of that is probably true to some degree.

However, when you look at what appraisals are used for, it becomes very important to consider other alternative methods of appraising property, because otherwise you may end up in an unreal situation.

Why an unreal situation? If you have a borrower who had his land appraised, say in 1980, at $1 million, and now the land, its true value, its productive value, is less than $300,000 but people are still lending money on that land a rate of $700,000 or $800,000, that person just is not going to be able to make payments. That is an unrealistic figure.

Yet the lending institutions seeing the appraiser's work may artificially prop up that value and keep it at a higher value. On the book it shows they have a lot of assets and they are doing well.

I think this has been a real problem when I have examined the kind of appraisals that come up in bankruptcy court in North Dakota, especially western North Dakota. So that is another area of discretion that the lender has and a power that the lender has over the borrower that I think is used to the detriment of the borrower.

UNWILLINGNESS TO INTERPRET THE AGRICULTURAL CREDIT ACT OF 1987 LIBERALLY

Perhaps the most important thing that I found in my work with Farm Credit Services and to some extent with Farmers Home Administration, and I think we saw a little bit of an illustration of that this morning, is the unwillingness to interpret the Agricultural Credit Act of 1987 liberally.

By that I mean being willing to work with the borrower in a less structured setting to negotiate a settlement, to work with the borrower so it does not have to go to the appeal process, to work with that borrower so that you can come up with a solution that will be reasonable to both sides.

My impression of what Farmers Home Administration officials said this morning is that they kind of put themselves into a straitjacket. If the DALR$ program did not produce the figures that the borrower wanted, that is tough. That is what the borrower had to accept.

I do not think that is necessarily the only way to go. Certainly the act can be interpreted more liberally than that and allow the borrower and the lender to come to a meeting of the minds and make a rational decision about how to keep that borrower on the farm, because that is in fact what the purpose of the act is. The sense of Congress built into that act says that very clearly, that the purpose of the act is to keep as many farmers on the farm as possible.

Of course the argument will be, well, we are just weeding out the bad farmers, the bad managers, and that kind of thing. I think we had some testimony earlier this morning about people who are caught in price and production cost squeezes that—Senator Conrad alluded to that—in the early 1980's, that put even the best of managers, in many cases, out of business.

So I do not think it is fair to say that, based on those inflated land values and the discretion that the lender has, that those people are not good farmers. And that is what I would—in my practice, of all the people I have as clients, I do not think a one of them is a bad farmer and is not capable of producing a good crop or a good herd of cattle, depending on what they do.

So those are the three areas that I find discretionary, that I am most concerned about. And I am sure that I will get many comments from board members here about that.

[The prepared statement and exhibits 1-4 of Mr. Disselhorst appear at the conclusion of the hearing.]

Senator CONRAD. Thank you, Tom.

One point I would like to make before the people from FmHA leave is, in a discussion over the noon hour, some people pointed out that one thing that might be very helpful is to send out, along with the package on DALR$, just a one sheet that would explain the elements of the DALR$ program. So I just make that observation for your benefit. It sounded to me like it might be kind of a good idea, and perhaps that is something that could be pursued.

Mr. DISSELHORST. Senator Conrad, there is one other point I wanted to make just very briefly.

Senator CONRAD. Yes.

Mr. DISSELHORST. I am an attorney, but I do not think the solutions to the questions I raised are going to be solved by litigation. I really do not. I think they are systemic. I think they rest in the policymakers in Washington and elsewhere. I think that is where the solutions have to come from.

They are not going to come from litigation like we had over the last 7 years—6 years with *Coleman* versus *Block*. That, I do not think, is going to be an ultimate solution. It cannot be.

Senator CONRAD. All right. Thank you very much.

Next we are going to go to Bruce Bohnsack, Director of the Seventh District Farm Credit Board, from Hillsboro, North Dakota.

Also, if Roger Johnson is back—I think he came in—Roger, why don't you come up and join this panel as well, if you will, because we may get into some issues that you should participate in.

Bruce, welcome and proceed.

STATEMENT OF BRUCE BOHNSACK, VICE CHAIRMAN, FARM CREDIT BANK, ST. PAUL, BOARD OF DIRECTORS, DIRECTOR, SEVENTH DISTRICT, FARM CREDIT BOARD, HILLSBORO, ND

Mr. BOHNSACK. Thank you, Senator.

Good afternoon. My name is Bruce Bohnsack. My wife, Esther, and I operate an 800-acre small grain and soybean farm in Hillsboro, North Dakota. I am here today as a director of the Farm Credit Bank of St. Paul. I appreciate the opportunity to be here to update you on several issues that are taking place at the district level.

RESTRUCTURED LOANS

Since January of 1987, the St. Paul District has been committed to a policy and program to restructure nonperforming loans. Our intent was to find a way to help a farmer who could not make his full payments restructure his debt to a level where he could make payments. This did two things: it first helped to shore up the unbelievable costs of carrying the nonaccrual loans, and, equally important, allowed our troubled borrowers to feel good about themselves by being able to once again pay off their debts. We initiated the program as a good business policy and remain convinced it was the right direction to take.

The Federal land bank associations in the State of North Dakota have restructured 2,465 loans, with a value of $380.3 million. Of these restructures, about one-quarter, 632, were what we called "cash outs", which means we reached a final settlement with the borrower and no longer have a loan with them. About one-eighth, 353, of the restructures were "deedbacks", where as a settlement we acquired property in lieu of foreclosure. Therefore, over 60 percent of all our restructures in North Dakota involve a continuing relationship with Farm Credit Services.

In North Dakota, 13 percent of our existing borrowers, and over 20 percent of our existing loan volume, represents restructured loans. Unfortunately, I imagine you have not heard from the many restructured borrowers who are indeed pleased with the outcome.

I do not mean to imply, Senator, that all has been totally rosy, either here in North Dakota, or elsewhere in our district. Today we have about 200 North Dakota borrowers who are either in foreclosure or bankruptcy. They represent approximately $44.3 million, or 4 percent, of our loan volume.

You have no doubt heard from some of these borrowers. I know I have. Senator, not every farmer can be restructured. Some are just too deeply in over their heads with debt to ever be able to work out an equitable solution with our cooperative lending institution.

As a District Director, I do not want to be involved in specific operational issues, which are best left to those who are here from service centers to address. However, as a District Director, I have sat in on several credit appeal hearings, as required by FCA's interpretation of the 1987 Agricultural Credit Act. These are hearings that follow a series of restructure meetings with the service center where mutual resolution of a debt restructure program has not been reached. I can tell you every possible effort has been made to consider every ~~possible alter~~native rather than foreclosure.

TROUBLED DEBT

To give you a quick overview of the troubled real estate debt today in North Dakota, I will cite figures which are available from the end of the first quarter of this year. There were 372 loans, for a total value of $50.8 million, in troubled debt. Of these, 262 loans were yet to be restructured and 110, totaling $16 million, were delinquent loans to previously restructured borrowers. Of these restructured loans in North Dakota, 7 percent are delinquent at this time, and this number is fairly consistent over our four-State district.

Senator **Conrad**. Could I stop you at that point? Just to drive that home, could you repeat that last figure? Seven percent are delinquent?

Mr. **Bohnsack**. About 7 percent of the restructured loans in North Dakota are delinquent. And the numbers are quite similar in the other States.

Senator **Conrad**. So 93 percent are not?

Mr. **Bohnsack**. Right.

As was the case when these loans were initially restructured, each such loan now in delinquency will be handled on a case-by-case basis. If a delinquent restructured loan meets the distressed loan definition, then we will fully comply with the District Distressed Loan Policy and the Agricultural Credit Act of 1987.

INTEREST RATES

The largest influence on interest rates that Farm Credit Bank charges to borrowers is the cost we pay for funds. In the past, Farm Credit has priced according to the average cost of money. Last summer our board adopted a policy of pricing to market on our variable rates. Our experience has been that this keeps us more current with other interest rates than in the past.

In the prepared statement, as the chart described as exhibit B shows, in a comparison of 3- and 6-month Treasury bills and Farm Credit Bonds, short-term Treasury rates increased an average of 2.75 percent in the past year. At the same time, Farm Credit securities increased by 3.25 percent.

In actual terms, the average cost of Farm Credit Bank, St. Paul's debt for the short-term loans increased 1.56 basis points from April 1988 to April 1989.

In spite of a one-time 50-basis point reduction in the long-term pool because of the financial assistance, the average cost of the Farm Credit Bank, St. Paul debt for long-term loans increased from 9.65 to 10.10.

I might add here that the St. Paul District did receive $133 million in the form of an assistance package loan. $50 million of this was used to buy back high cost debt and the remainder was used to shore up the down end of the borrowers' stock.

The other major factor influencing interest rates is the cost of operations. The cost in the St. Paul District, which includes both of the St. Paul bank and service centers, per $100 of loans was $1.82 in 1986, with a steady decline over 2 years to reach $1.49 at the end of 1988. At the same time, operating expenses for the district peaked at $122 million in 1986, and declined to $98 million at the end of last year, or a 22 percent decrease over the 2 years. However, at the same time, our volume has decreased by 14 percent during that period, thereby minimizing the favorable impact on our interest rates. This minimized the favorable impact of interest rate reductions.

Over the 2-year period of 1987 and 1988, both the district service centers and the Farm Credit Bank reduced their expenses by approximately 23 percent. Cost reductions which had been achieved by the Farm Credit Bank and associations have been approximately the same for the past 2 years, when measured on a percentage basis.

APPRAISAL PROCESS

Another area I would like to discuss is the Farm Credit's appraisal process. In 1986 we decided to centralize the appraisal process; this was accomplished in 1988. The appraisal process was centralized for several reasons. The major ones are for consistency throughout the district, objectivity in the credit decisionmaking process, and the quality and reliability of our financial statements. In addition, it was felt that by removing the loan officer from the appraisal process, there would be less opportunity for influence by any borrower's request for credit.

Since then, real estate appraisals are being done by appraisers who have had specific training, and are not involved in other parts of the organization's activities.

The appraisals for new credit as well as for acquired property are done on the basis of current and supportable market values.

All real estate taken as collateral, acquired property, and all litigation actions requiring collateral values must have a foundation appraisal, which is one based on a field inspection and documented on forms with a narrative discussion of the subject property. These appraisals must adequately describe the subject property with legal description, soil type, drainage or lack of it, and items of that nature, and they must have adequate support for the value based on the time the value was made.

SALE OF ACQUIRED PROPERTY

You have asked us about our procedure for selling acquired property. Our policy is in compliance with the Agricultural Credit Act of 1987 and pertinent Federal regulations. The following is the process we use in selling our acquired property:

First, at the time of acquisition, a current appraisal is used to establish a current market value.

Second, we develop and plan a sales program to best decide how and when to market property for sale.

Third, after receiving the new appraisal and making the decision to offer the property for sale, notifying the former owner of his or her right to purchase the said property at appraised fair market value.

Fourth, the former owner has 30 days to decide whether to elect to purchase the property at appraised value, to make an offer below appraised value, or just not respond, thus waiving his or her rights.

Fifth, if the former owner elects to purchase the property at appraised value, we must accept the offer and do so by accepting and selling within 30 days of the time we receive that offer.

Sixth, if the former owner's offer is less than appraised value, we may either accept or reject the offer. We must notify the former owner of our decision within 15 days. If we accept, then we will close at a reasonable, mutually agreeable time.

Seventh, if Farm Credit Services rejects the offer at a lesser value or the former owner does not respond, the property can be offered for sale to the general public.

Eighth, if an offer is accepted from another person at a price equal to or less than the former owner's offer, we will come back to the former owner again with another opportunity to purchase the property at terms equal to those given to the third party.

Ninth, if the former owner's offer at less than the appraised value was rejected and another offer is received that is higher than the former owner's declined offer, the property will be sold to the third person without further notice to the former owner.

Tenth, if the former owner has not responded within the 30 days called for by the law, they lose the right of first refusal and we may sell the property to any person at any time without further notice given.

We follow similar procedures if we elect to lease an acquired property.

FMHA DEMONSTRATION PROJECT

We were particularly pleased to see the Farmers Home Demonstration Project included in the Agricultural Credit Act of 1987 and have been anxious to have final FmHA regulations and begin to work together to benefit both new farmers and our acquired property inventory.

We fully support this program and have met with FmHA leaders to facilitate and expedite implementation.

Unfortunately, due to the long delay in getting the regulations approved through the FmHA/OMB process, actual use of this program was not available during the winter, which is our prime land sales time period. However, our brief experience in North Dakota to date shows seven offers have been generated for a total of $747,000. Though the current volume is small, we hope for more activity to be generated in the future.

LOAN LOSS REVIEW LEGISLATION

I would like to just comment on the H.R. 1565, legislation which was introduced recently by your colleague Congressman Byron Dorgan in his continuing attempt to assist our Production Credit Associations in receiving the equitable tax treatment on their reserves for loan losses. We lost that deductibility in the Tax Reform Act of 1986, but the smaller commercial banks still enjoy that benefit. I know the directors here can speak more fully to the issue, but I would express my hope that you will endorse this legislative approach in the U.S. Senate.

Senator **Conrad**. I might just indicate to you that we have made a decision to introduce that same legislation on the Senate side.

Mr. **Bohnsack**. Thank you.

SUMMARY

In summary, Senator, I am happy to be a director on the Farm Credit Bank of St. Paul Board. I have to confess it is not always a comfortable position, but I feel confident that the intent of the board and management of St. Paul and the service centers throughout the district is to uphold the cooperative principles and congressional mandate we were organized under. Our policy deliberations are undertaken with the best interest of the owners of this business uppermost in our minds.

Thank you for the opportunity to be here today. And at this time, we will try to address questions.

[The prepared statement and exhibits of Mr. Bohnsack appear at the conclusion of the hearing.]

Senator **Conrad**. Very good. Thank you, Bruce.

We will next go to James Link, board member of the Fargo Region, from Wahpeton, North Dakota. Welcome, James.

STATEMENT OF JAMES LINK, CHAIRMAN, BOARD OF DIRECTORS, FARM CREDIT SERVICES OF FARGO, ACA, WAHPETON, ND

Mr. **Link**. Thank you, Senator, for being here and for this opportunity for me to be here. I also would like to thank you on behalf of any farm borrower for your efforts in helping with some tax relief in cases where there are restructures and write-downs and it has created a tax problem for the individuals.

BACKGROUND

My name is James Link. I farm near Wahpeton, North Dakota, with two of my sons, and we raise wheat, barley, soybeans, and sugar beets. I serve as chairman of the board of directors for the Farm Credit Services of Fargo, ACA.

INTRODUCTION

This testimony is presented on behalf of the board of directors and management of Farm Credit Services of Fargo, ACA, at the request of U.S. Senator Kent Conrad.

DESCRIPTION OF FARM CREDIT SERVICES OF FARGO, ACA

Farm Credit Services of Fargo is an agricultural credit association (ACA) serving a nine-county area of southeast North Dakota. We officially became an ACA on April 1, 1989, with the merger of the former Production Credit Association of Fargo and the Federal Land Bank Association of Fargo.

We have seven branch offices, about 95 employees, and an annual operating budget of $4.2 million. We serve about 3,500 farmers. We have about 3,000 long-term real estate mortgages totaling more than $343 million in volume, and 1,200 loans for operating/equipment for about $78 million in loan volume.

PURPOSE OF THIS TESTIMONY

The purpose of this testimony is to address the disclosure requirements of the Farm Credit Act as amended by the Agricultural Credit Act of 1987 and the implementing of Farm Credit Administration regulations, including the costs of disclosure versus benefits intended by the act and regulations.

GENERAL POSITION REGARDING DISCLOSURE

The board of directors and management of Farm Credit Services of Fargo, ACA, support the purpose and intent of disclosure laws for the following reasons.

Number one, Farm Credit borrowers must fully understand the terms and conditions under which their loan is written, as well as their rights and obligations under the loan contract.

Number two, stockholders in Farm Credit institutions should be fully aware of the financial condition of their institution and the risk inherent in the stock they own.

And number three, directors and management of Farm Credit institutions should be held accountable for the financial condition of their banks and associations and should operate such institutions in a climate of openness, free of any conflict of interest or suppression of information.

We agree that the Farm Credit legislation in recent years has resulted in more informed borrowers and more accountable management and directors.

However, for disclosure to truly serve the purposes outlined above, the information disclosed must be meaningful, readable, and understandable so that borrowers can use the information in making personal financial decisions as well as decisions regarding the management of their cooperative.

In addition, the benefits the recipient derives from the information should justify the administrative burden and the cost placed on complying with Farm Credit service institutions.

In many instances, disclosure regulations require Farm Credit institutions to distribute information that is so extensive, it would take hours to just read it, and so complex it would take an attorney or an accountant to understand it. Not only is this type of disclosure costly, it defeats the very purpose for which it is intended.

CRITERIA APPLIED TO AGGREGATE PACKAGE OF DISCLOSURE/NOTICE REQUIREMENTS

Specifically, FCS of Fargo complied with 20 different disclosure/notice requirements for 1988, which are detailed in our written testimony and in the attached supporting exhibit. These disclosures generated a staggering load of 772,000 pages of information in 1988 at a total estimated cost of $57,300. This means our average stockholder/borrower received a total of 220 pages of information from FCS of Fargo in 1988 at a cost to that stockholder/borrower of $16. Few if any stockholder/borrowers would be willing to spend the time and effort necessary to read and digest 220 pages of information.

Senator CONRAD. Were there charts in there? That would make it easier if there are charts.

[The material can be found at the end of the prepared material of Mr. Link, see page 313.]

Mr. LINK. In some cases there probably were, Senator, but not all of them.

Few, if any, stockholders/borrowers would be willing to take money out of their own pockets to pay for this information. This is overdisclosure to the point that the average stockholder/borrower regards FCS correspondence as junk mail.

CRITERIA APPLIED TO INDIVIDUAL DISCLOSURE/NOTICE REQUIREMENTS

In our opinion, two of the disclosure requirements, in particular the annual report and the quarterly report to stockholders, do not provide meaningful information in a cost-effective manner and hence should be revised.

NOTES TO FINANCIAL STATEMENTS ARE TOO COMPLEX AND TECHNICAL

Regarding the annual report, we believe that Notes to Financial Statements are too complex and technical for the average reader and probably block effective communication of the intended message. At this time, however, we are uncertain as to what information is required by FCA regulation and what is required by our independent auditors and generally accepted accounting principles (GAAP). Therefore, we intend to study this further before making a recommendation for change.

In addition to receiving our association annual report, regulations require that the district Farm Credit Bank's annual statement be sent to both Federal land bank association and Production Credit Association stockholders. While FLBA stockholders do have a financial stake in a bank, the financial interest of PCA stockholders in a FCB are diminishing—therefore, we would recommend the elimination of the FCA requirement that the FICB (now FCB) financial statements be sent to PCA borrowers.

QUARTERLY REPORTS

Regarding quarterly reports, the existing regulation requires information that is excessive, technical, and ineffective. It allows for publishing the quarterly report information in local newspapers to reduce costs, but due to the excessive amount of information, these costs are not reduced through this process.

RECOMMENDATIONS

Therefore, we recommend reducing the quarterly reporting requirement to summary balance sheet and income statement information and only the most essential footnotes. This would allow the report to be cost effective and be published in newspapers. More detailed information would be available upon request to any stockholder who would want it.

Individually, each disclosure requirement does not appear overwhelming, but collectively they certainly are. Therefore, we encourage FCA and Congress to be cautious in considering any further disclosure/notice requirements. We already run the risk of FCS mailings being piled with the junk mail. Furthermore, existing disclosure/notice requirements are already expensive in scope and detail.

In addition, implementation of changes recommended in existing regulations will satisfy stockholders' financial information needs, enhance cost-effectiveness, reduce stockholder discontent with quarterly financial disclosure, and meet the intent of Congress regarding the stockholder protection.

Thank you, Senator.

Senator **Conrad**. Thank you very much, James. I very much appreciate that testimony. I think you may know that I was one who felt those disclosure requirements really went beyond the bounds of reasonableness when they were provided for.

I had some strenuous discussions with my colleagues on them and predicted that we would have precisely the result that you described; that is, we have gone so far that it becomes a situation in which you actually reduce and hinder disclosure because you so flood people with paper and minutia and complexity that they cannot possibly comprehend it or digest it. Frankly, it is even worse than I anticipated—220 pages. I mean, none of us have the time to sit down and try to digest that kind of report.

So I think you have given very valuable testimony here. I hope we are now able to persuade our colleagues, with the benefit of the experience we have had, that we need to pull back and give people what is relevant and important but not just overwhelm them with paper.

Mr. **Link**. If I might add, Senator, when you add the volume of paper we get from the ASCS office to this, the farmer's buried in paper. [Laughter.]

[The prepared statement and attachments of Mr. Link appear at the conclusion of the hearing.]

Senator **Conrad**. Sounds like being a Senator. It is the same thing, just a constant flood. All right. Thank you very much.

Next we will hear from Lyle McLain, board member of the Minot Region, Farm Credit Service Centers, Mohall, North Dakota.

STATEMENT OF LYLE McLAIN, BOARD MEMBER, MINOT REGION, FARM CREDIT SERVICE CENTERS, MOHALL, ND

Mr. **McLain**. Thank you, Senator Conrad. It is my pleasure also to be here and testify today at this hearing. I am Lyle McLain. I am the board member of the Minot Farm Credit Services, which is now an ACA as of April 1.

RESTRUCTURING OF DISTRESSED LOANS

North Dakota and the Seventh District have supported the concept of restructuring of distressed loans if that does not cost any more than the foreclosure process. In fact, the North Dakota associations innovated a model restructure program with the Bank of North Dakota and we were restructuring loans 1½ years before the act of 1987 was passed . This was through the assistance of our Governor, and I worked very closely with him in that process. At the time the Farm Credit Act of 1987 was passed, at the Minot association we had already restructured $70 million volume of unrestructured and nonaccrual loans.

However, we did not run into the problems, I guess, that a lot of the other associations have since the enactment of the Farm Credit Act for the simple reason we did not have all of the Federal bureaucracies to deal with.

And so less than 3 years later—well, as of June 30, 1986, we had $70 million of nonaccrual loans, and 3 years later the unrestructured and nonaccrual loans was less than $7 million, a $63 million reduction.

With a substantial number of loan restructures completed, a majority of the loans we are now dealing with cannot be restructured or will not agree to restructuring. These are loans that have been delinquent for an average of 2 years and by alternating between the ACA, Agricultural Credit Act, bankruptcy laws, and State debtor protection laws, they remain in nonaccrual status an average of 4 years, with a few of these as long as 5 or 6 years, before they can be resolved.

All North Dakota associations are working with the State mediation program to restructure loans. Such mediation programs, to be effective, need participation of all lenders, including private banks, FmHA, and Farm Credit. FmHA has increased costs to Farm Credit Associations in North Dakota by its refusal to release valueless liens, even after the borrower has restructured or deeded back.

In consulting with FmHA, they tell us the reason they will not release a lien, a second mortgage, is the fact that the Federal Fish and Wildlife have priority in looking at that land to see if it has a value for fish and wildlife purposes.

We believe it would be fair, if this is the reason that FmHA cannot release those liens, then maybe the Federal Fish and Wildlife should pay the cost that is now costing our Farm Credit borrowers for the delay, which is many times up to a year before we completed the title on land in the event we have acquired it or it has been deeded back.

Our members who are current on their loans are increasingly aware of the cost of these nonaccruals and that the cost is ultimately paid by the members.

I think at this point it should be made clear and for the congressional record that the Farm Credit System is a private organization. Its funds are privately owned. The funds are borrowed. It is a quasi-government organization. And the Federal Government does not, per se, put money in, even though there is a so-called bailout system, or bailout, that is really a loan, and all that money has to be paid back, with interest at the end of 15 years.

We, as directors, understand that the majority of this cost in dealing with delinquency loans in the State of North Dakota is due to bankruptcy laws and State debtor protection laws, but our members tend to blame the restructuring provisions in the Agricultural Credit Act of 1987.

Other groups take the opposing position that the Farm Credit Services can be very generous in granting restructures because we received $4 billion in financial aid to cover the cost. We, as directors, know that the Financial Assistance Board has sold less than $1 billion in bonds—that has actually went to cover the cost of restructuring nationwide—15 months after the act was signed. That is the amount of dollars that has actually been sold in the bond market. The failure of the Financial Assistance Board to respond with necessary financial aid means that every dollar lost through restructure or foreclosure threatens the financial viability of the whole Farm Credit System. For example, our Minot association requested assistance, which is exhibit 1 in the prepared testimony, which was a letter, with the understanding that if we merged our

Federal land bank and PCA together we would have the availability of at least discussing assistance if we needed it down the road. Exhibit 2 is a letter that we received back telling us that the Minot Federal Land Bank was not eligible for assistance.

So therefore, we led our stockholders kind of down a blind road in encouraging a merger, which was mandated by Congress if you met the criteria, with the understanding that we would have assistance to help us continue to restructure and to pay back the restructured loans, or to replace the money that was actually part of the capital assets of the association and therefore, upon becoming an ACA, we would become a viable agriculture lending institution again.

Senator CONRAD. What was the reason given that Minot was not eligible for assistance from the Assistance Board?

Mr. MCLAIN. I can read the response.

Senator CONRAD. If you would read for me the relevant part that points to the reason that they assert——

Mr. MCLAIN. Here is the letter that was from Eric P. Thor, the president and chief executive office of the Farm Credit System Assistance Board, dated March 13, 1989. It says:

> The Farm Credit Administration has informed the Farm Credit Assistance Board that as of December 31, 1988, no Federal land bank association (FLBA) in the Farm Credit District of St. Paul had stock, participation certificates or similar equities whose book value was below par or face value based on generally accepted accounting principles. Accordingly, the Northwest North Dakota FLBA is not eligible under section 6.4 of the Farm Credit Act of 1971, as amended, to be certified as eligible to issue preferred stock.

This primarily was based on, Senator, when the Seventh District Bank received assistance and therefore that brought all of the stock, which at that point in time was actually stock of the Seventh District Bank, up to par.

However, at the same time we are in the process of carrying out the mandate of Congress that if you have associations of Federal land bank and of PCA that have 90 percent like territories, you are forced to offer a vote of merger to your stockholders.

So it was on these assumptions that we felt that we would need Federal assistance at the association level, and we presented this with "do pass" recommendation to our stockholders, that we would obtain that assistance.

Senator CONRAD. And of course you would have needed assistance——

Mr. MCLAIN. Right.

Senator CONRAD [continuing]. Had not St. Paul received assistance.

Mr. MCLAIN. Right.

Senator CONRAD. It was the granting of assistance to St. Paul that allowed the stock to be of par value which then precluded the Minot district from getting assistance.

Mr. MCLAIN. Right. OK. Other groups take the opposing position that the Farm Credit Services could be very generous in granting restructures because we receive $4 billion in financial aid to cover the cost. We as directors know that that is not true.

And as I mentioned, there has only been $1 billion sold that actually can be contributed to the restructuring program nationwide.

And it is very costly for us to bear those costs. And at the same time merging as an ACA, now we are having to build capital and continue to restructure loans and so forth.

What we really need, Senator, is some clear communication from FCA, the FAB Board, the Federal Assistance Board, and our congressional offices to help us present a clear picture to our members and the general public regarding the benefits and costs of the Agricultural Credit Act of 1987.

It has been quoted to us by St. Paul that for every dollar the St. Paul system received, it actually cost $2.35 in additional assessments from FCA, and so forth, because of the increased workload. This, to us, is a very counterproductive way of solving a present problem in rural America.

I do have five other areas of concern.

Senator **Conrad**. I might just observe that I have very serious doubts about their calculations, just for the record. The fact is St. Paul received—how much was received by the St. Paul District?

Mr. **McLain**. $133 million.

Senator **Conrad**. $133 million. I think—my own opinion is some creative accounting was used to arrive at that.

Mr. **McLain**. I think that has been the case.

Senator **Conrad**. $133 million—you know, we are faced with a situation which we were told three districts were on the brink of insolvency at the time the Credit Act was passed. And if three districts were insolvent, Farm Credit System would not have been able to issue a unified accounting statement which would have precluded the entire system from borrowing further funds.

I assume that the directors of St. Paul are prudent decisionmakers and they would not have taken $133 million of assistance if it is true that it cost them $2.35 for every dollar they received.

Mr. **McLain**. Maybe Mr. Bohnsack would like to respond to that. [Laughter.].

He is the director. He is the one that was telling us that.

Mr. **Bohnsack**. That is right, Senator. This statement was given to the association directors at the annual meeting, which was held approximately 10 days ago. And I cannot cite all the details on it, but basically——

Senator **Conrad**. Well, does it not strike you as something terribly irrational about that statement? Why would St. Paul take $133 million if it cost them $2.35 for every dollar they got?

Mr. **Bohnsack**. Does not appear to be very smart, does it? [Laughter.]

However, the reasons that were cited regarding that money and how you reached that conclusion, and we have debated that, was the cost of borrower rights, the cost of holding acquired property, the different calculations of reporting that we have to do, along with, of course, at the time when the interest rates kick in and so on.

Our last conversation in the board room about it in—and we were asking, Larry, can you really stand up to that? And he said yes we can. And one of our board members asked the question: Well, what about the amount of money that we used to shore up the stock? Certainly we are getting a return on that. Oh, he said, I missed something. And that changed his figure by about from—you said $2.35 to about $1.80.

So we are working on that. He thinks, and we tend to have to agree with where management is leading us on this, that the cost is a little high for the benefit we are getting, and yet we are really looking at just indeed what the cost is. His initial statement might have been a bit strong because we perhaps did not consider the income potential.

Senator CONRAD. I think we have to ask him some more questions. I think there are some other things he must have forgot.

Mr. BOHNSACK. I cannot speak to that.

Senator CONRAD. I appreciate that. Larry was in my office and made the same statement to me and——

Mr. BOHNSACK. I sat there with him.

Senator CONRAD. Yes. I really have my doubts about that. But I appreciate your response.

Mr. MCLAIN. One more thing, Senator, that is tied with that. In the effort to work closely with St. Paul as an ACA in the field, based on those calculations, we at the ACA in Minot feel that we should pursue Federal assistance. St. Paul is saying no.

Senator CONRAD. You do not want it if it is going to cost $2.35 for every dollar you get. [Laughter.]

Mr. MCLAIN. It is not going to do you any good and here is what the cost is. So therefore there is not a whole lot of effort on St. Paul's part to even help us pursue assistance. So that is kind of where we see some of the problems.

Senator CONRAD. I tell you, I think you have already experienced most of the cost. I mean, the question now is whether you get the benefit.

Mr. MCLAIN. Right.

Senator CONRAD. One of the things that is very troubling to those of us who sit in Congress is we put on the table $4 billion for a purpose and the purpose was to get interest rates down to customers. If the Federal Assistance Board is not doing the job, then we ought to have a hearing in Washington and we ought to call them in there and we ought to find out why not.

Because the idea is to get interest rates down to farmers. That is the reason this has been passed, to allow people to survive. Some of us are a little agitated and a little concerned that $4 billion was put on the plate and $1 billion has been used. Where has the Assistance Board been? The intent of Congress is very clear.

Mr. MCLAIN. I think, Senator, maybe there has been more than $1 billion. There was a number of bonds sold to go back and bring up to par stock that had been frozen back before the act was passed. When I mentioned $1 billion, this was actually, I believe, a fairly close figure as to the amount of dollars that has been sold to actually cover restructuring costs.

Senator CONRAD. I think that they are going to go to use about $2.2 billion at the top. I think that is the number they are using, $2.2 billion of the $4 billion provided for, and that is not the intent of Congress. Congress was to put $4 billion in to achieve a purpose, which was to get interest rates down. Interest rates are not down. They are up.

I think somebody has got some accounting to do. I might add—I do not say that because you are the ones that have the accounting to do. I think there are people at the Assistance Board that have some accounting to do before the Congress.

Mr. McLAIN. We did have, as Mr. Bohnsack mentioned, our annual meeting in St. Paul about 10 days ago, and we had one of the members of the Assistance Board there. And he stood before us and we were challenging him on the policies and procedures of the Assistance Board.

And he said that Congress is telling them they are doing just exactly what Congress intended to keep that down as low as they possibly can. Well, that is not going to solve the farm credit crisis out here if farm credit is to be a part of solving that problem.

Our position has been, in Minot, that we probably were partly responsible for creating the problem because we, in some cases, lent too much money. However, we also feel that we are part of the solution as well, and that is why we took off ahead of any Federal legislation to start restructuring loans.

Senator CONRAD. This district ought to be commended for that. That is the only rational response to this problem, and I must say this district did that. You can see in the numbers, this district has, as a result, been rebounding better than some of these other districts that wanted to put their head in the sand.

The Jackson District is gone. Of course they had gross mismanagement in addition to not reacting rationally to the problem before.

OTHER AREAS OF CONCERN

Mr. McLAIN. I do have some other areas of concern, Senator, in summation. And if I may, I guess our intent—or what we felt the intent of the Agricultural Credit Act of 1987 was to provide financial assistance through a loan for 15 years to help local FCS institutions to cover the cost of restructuring and to lower interest rates to farmers. That is what we felt the intent of Congress was. I can assure you, Senator, that is not the way it is working.

As we understand the Agricultural Credit Act of 1987, the FCA was also to become an arm's length regulator of the system. I can assure you, and I am sure Mr. Bohnsack will back me up, that probably FCA is more involved than the management in the everyday operations of the system than they have ever been before. They have documentation, we have documentation, of that. I think that is some of the things that your committee should be aware of.

CONCERN WE HAVE IS FCA'S ABILITY TO ASSESS THE NATIONAL SYSTEM TO COVER THEIR BUDGET

Also, another concern we have is FCA's ability to assess the national system to cover their budget. Very shortly after the Agricultural Credit Act was passed and signed by the President, FCA added 250 more very inexperienced auditors. We have been blessed with more auditors than we have borrowers or employees. In fact, our costs exceeded $100,000 last year in one association alone.

Senator CONRAD. Let me ask this question. I hate to interrupt again, but this is an important point because I got an amendment passed that one audit is required—because of what James Link told me, we got an amendment passed, one audit is supposed to satisfy the entire chain of command. Is that being followed?

Mr. McLAIN. That sounds great. When does it become effective?

Senator CONRAD. That is effective with the Agricultural Credit Act.

Mr. McLAIN. Is that right?

Senator CONRAD. One audit. One audit.

Mr. McLAIN. We have five audits now. [Laughter.]

Then the district bank audits. We have our own internal auditor, which we think is the most effective, because the local board is held accountable for everything and we have to know that when it is happening, not 18 months after it happened. And that is the return time on FCA audits.

Senator CONRAD. I used to be in the auditing business and I have a lot of respect for auditors, but the last thing anybody needs is five sets of them.

Mr. LINK. And then 18 months late.

Mr. McLAIN. Yeah, and then 18 months late.

DENY REQUEST FOR INCREASE IN BUDGET

I guess the other thing, Senator, I would like to conclude with is the fact that we are aware that FCA has a request for an increase in their budget of about $2 million.

Senator CONRAD. They need more auditors? [Laughter.]

Mr. McLAIN. Well, I guess I would like to say I would hope that you deny that and look at cutting their budget by 50 percent. [Laughter.]

INTENT OF CONGRESS HAS BEEN IGNORED BY FCA

Then in summation, I would just like to say that I believe the intent of Congress has been ignored by FCA, the FAB Board. Get hard dollars out to local institutions where they will do the most good and will solve the credit problems that exist in the rural America.

And we certainly are out here to try to help solve that problem in the eyes of the intent of Congress, but we are strapped by tremendous amounts of Federal regulations and bureaucracies.

I thank you for having the opportunity to be here.

[The prepared material and letters of Mr. McLain appear at the conclusion of the hearing.]

Senator CONRAD. Thank you very much. That is excellent testimony, and I think I am going to be reading back some of the testimony and some of the exchange we have just had in Washington to some other folks that we are going to have in for a hearing because they need to hear exactly what it is that you are saying.

Next, we are going to hear from Cliff Ferebee, board member of the Bismarck-Mandan region, from Halliday, North Dakota.

Cliff, welcome and proceed with your testimony.

STATEMENT OF CLIFF FEREBEE, DIRECTOR, FARM CREDIT SERVICES OF BISMARCK-MANDAN, NORTH DAKOTA, HALLIDAY, ND

Mr. **Ferebee**. Thank you, Senator.

GREETINGS AND CONCERNS

Good afternoon. My name is Cliff Ferebee and I am a farmer/rancher from Halliday, North Dakota. I am also on the board of directors of the Production Credit Association of Mandan, which is part of the Farm Credit Services of Bismarck-Mandan, North Dakota. You have heard, or will hear, from representatives of the other three North Dakota service centers on issues that we as North Dakota Farm Credit directors are concerned about. I would like to take several minutes to touch on concerns with: the effect of overregulation and disclosures on the paying borrower; and the amount of voluminous paperwork being done by service centers for loan documentation.

WE SUPPORT THE PRIMARY CONCEPTS OF THE AGRICULTURAL CREDIT ACT OF 1987

Let me begin by saying as a director of the Farm Credit Service of Bismarck-Mandan and on behalf of the other Farm Credit Service of the Bismarck-Mandan directors, we support the primary concepts of the Agricultural Credit Act of 1987. I have no problem with having in place regulations and procedures that require adequate information to borrowers so we, as borrowers, are properly informed and information such that credit officers can make informed credit decisions.

REGULATOR AND REGULATIONS

The Farm Credit Systems needs an effective arm's-length regulator. The system needs effective regulations, but not regulations and a regulator that are overburdensome. The system needs a regulator that is realistic and practical. Only then can we have a rapport with borrowers that is ongoing and not adversely affected. Overreaction to the act by FCA regulations, debtor groups, and others, have primarily focused on the distressed borrower. The long-term survival of the Farm Credit System is with the paying borrower, but overregulation through required loan documentation, required disclosures, and increasing system costs, have created the situation where the working relationship with the paying customer is being affected.

LOAN DOCUMENTATION

All borrowers are asked to provide minimum levels of loan documentation. Current district policies driven by FCA regulation require minimum documentation levels of earnings, balance sheet, financial trends, loan narratives,signed formal servicing plans, and so on. These policies leave no room for the local association director, management, or loan officer discretion—no flexibility to adjust the amount and nature of documentation to the amount and nature of loan risk. Adequate file documentation is necessary to have sound credit, but there comes a point where loan documentation is becoming such a dominating issue it replaces loan analysis. To document a loan file is one thing. To analyze credit and make a correct loan decision is another. A long-term Federal land bank loan adversely classified is to have annual financial information, even though the loan may have been on the books for a number of years and may be current in payment. Loans that require servicing due to delinquency, or movement to nonaccrual, are required to have signed servicing plans. It does not matter if the loan officer says he has done it or the customer says he will do it, what has taken priority is that it is documented in the loan file.

NOT AGAINST LOAN DOCUMENTATION THAT WILL ASSIST IN PROVIDING FOR A SOUND ANALYSIS OF CREDIT

Do not get me wrong. I am not against borrower rights. Borrower rights are important, they are good. I am not against loan documentation that will assist in providing for a sound analysis of credit. But what is at stake is customer service and cost. In the past year, there has been a continued overwhelming concern to document the loan file so that information can be readily available for someone else to come along to check to see that what was supposed to be done was done.

EXAMPLE OF OVERREGULATION

Another example of overregulation is the issue of having at least two insurance companies that are required to be offered to borrowers who purchase insurance. I understand the requirement as it was put forth in the act, and the fact that borrowers are to be offered a choice of two insurance companies and the borrower has to choose which one. However, if the borrowers do not want insurance, they sign a form indicating they do not want it. Once they pick the company, they sign which company they choose. Next year, the borrowers are asked to choose an insurance company again or sign that they do not want the insurance again. Would it not be good business sense to dictate once you sign you do not want insurance, you should not have to sign over and over the following years? Or, once you choose a company you would stay with that company until dissatisfied, rather than have to sign that you choose the same company year after year. Regulations such as these are not required by commercial competitors, but yet it is regulations such as these that create the paying customer concern.

COSTS

In the process of working with a borrower, we give or provide to that borrower interest rate notices, annual meeting notices, merger notices, election result notices, restructure notices, mediation notices, nonaccrual notices, right of first refusal notices, besides any other information and notices needed to close the loan. And, we document to the file that those notices are given. Borrowers who are current on their loans are becoming increasingly aware of the cost of doing business with the Farm Credit System—costs that many of our competitors do not have—costs that are affecting the long-term viability of the system.

MERGER

In January 1989, our board of directors proposed a merger to the PCA and Federal land bank stockholders of Bismarck-Mandan, a merger of unlike institutions which we felt was in the spirit of the Agricultural Credit Act, a merger which would show long-term viability but was conditioned with financial assistance. Our stockholders overwhelmingly supported the proposal. We requested certification for financial assistance only to get back from FAB a letter requesting a massive amount of information. Then, before we could assemble the 27 points of questioned information and analysis, we received a letter saying no assistance would be provided. Our merger, with its proposed condition for acceptance, was rejected by FAB before we could even submit any information that had been earlier requested. The merger vote timeframe which was put forth in the Agricultural Credit Act of 1987 cost this association thousands of dollars and many days of time, only to be rejected by FAB before we feel we had a fair hearing on the assistance issue. It created a member relations issue with our stockholders. Questions were raised as to why we spent the time and the dollars. We thought it was in the spirit of the act. Evidently, FAB did not.

SUMMARY

In summary, again let me state the primary concepts of the act are supported. Borrower rights are important. Loan documentation for sound credit analysis is important. But what is at stake is borrower service and cost. There needs to be adequate information to make informed loan decisions, but there also needs to be room for flexibility, common sense, and good business sense. There needs to be room for individual discretion. The paying stockholder is the future to the long-term viability of the Farm Credit System, to the long-term viability of Farm Credit Services of North Dakota. We feel an effective arm's-length regulator must take into consideration and give latitude and flexibility for local loan and financial decisions to local associations that exhibit strong, sound leadership through stable, sound boards of directors and management teams—leadership that has been proven.

We urge you, Senator, and your committee to recognize the need for member responsiveness, price competitiveness, and we urge you to pressure FCA as a regulator to use common sense and good business sense in being an effective arm's-length regulator. Thank you.

[The prepared material of Farm Credit Services of Bismarck-Mandan appears at the conclusion of the hearing.]

Senator CONRAD. Thank you very much.

Next we will hear from Bill Muhs, a board member of the Grand Forks region, from Langdon, North Dakota.

That will be our last panel witness. Then I intend to open it up to the public for questions. I will have a number of questions of my own, but as soon as Mr. Muhs has completed his testimony we will go to the audience for their questions. Welcome Mr. Muhs.

STATEMENT OF BILL MUHS, BOARD MEMBER, GRAND FORKS REGION, FARM CREDIT SERVICE CENTERS, LANGDON, ND

Mr. MUHS. Thank you, Senator Conrad.

BACKGROUND

My name is Bill Muhs. I farm with my father. We farm 1,200 acres in Langdon, North Dakota. We raise wheat, barley, and sunflowers primarily. In addition to farming, I am active in the North Dakota Farmers Union and I am currently on the board of directors in Cavalier County. I am also a director of Production Credit Association of Grand Forks, North Dakota, part of the Farm Credit Services of Grand Forks. I have been involved with co-ops all my life and I am aware that my duty is to represent all members, and I stress all members, as a director. It is hard to speak to just one issue because all the issues seem to be interrelated.

CONCERN ABOUT THE CAPITALIZATION REQUIREMENTS REQUIRED IN THE AGRICULTURAL CREDIT ACT OF 1987

I would particularly like to emphasize today our concern about the capitalization requirements required in the Agricultural Credit Act of 1987, and currently being implemented under the Farm Credit Administration regulation.

PROBLEMS OF THE FARM CREDIT SYSTEM PALE BY COMPARISON TO THE PROBLEMS OF OTHER FINANCIAL ORGANIZATIONS

The problems of the Farm Credit System pale by comparison to the problems of other financial organizations in the country. It is doubtful that the $4 billion authorization will be needed by the Farm Credit Administration Assistance Board. I believe something in the neighborhood of $2 billion, as we discussed before here, of bonds have been issued, and we believe that it appears that most of the critical needs for assistance have been met.

FCS NEEDS TO BE STRONGLY CAPITALIZED AND FINANCIALLY HEALTHY

As farmers, we recognize that our primary lending institution, the Farm Credit System, needs to be strongly capitalized and financially healthy. Our association in Grand Forks has made substantial progress in that direction, thanks in part to your assistance in the past year. We agree with Congress and the Farm Credit Administration that capitalization of 7 percent should be a minimum level and, hopefully, the system will be able to capitalize higher than that as it returns to profitability.

WE HAVE TWO PROBLEMS WITH THE CURRENT REGULATIONS

We have two problems with the current regulations. First, capitalization is expected to be met in a period of 5 short years, beginning July 1, 1988. For associations and district banks in serious financial difficultly, that puts an almost unachievable burden on accomplishing that goal. The amount of capitalization, the time in which it needs to be accumulated, and the large array of the debtor's rights available for delinquent borrowers have all had direct bearing on the interest rate farmers pay, and I am sure by the end of the day you will know that we feel interest rates already are unbearably high.

Our second concern is the redemption of our borrowers' stock. As a cooperative, we have to be in a position to redeem stock as redemption is earned, whether it's through the payoff of a loan or the pay down. Under FCA's current regulations, we can have forbearance on accumulating 7 percent permanent capital after 5 years as long as we are making progress in that direction, but we can no longer redeem our shareholders B stock. That restriction is tantamount to putting the district bank or service center out of business. The day we cannot redeem stock when redemption is called for, is the day we will have to close our doors.

This problem could be solved simply by an amendment to the current regulations from FCA, but FCA management has refused to do so in spite of a full day's testimony from farmers and managers of the system. Apparently, the only remedy will be congressional action. First, we would like to see the phase-in period extended from 5 years to 10 years and, secondly, we would like it clearly articulated that any farm credit entity complying with the minimum requirements toward building capital will be allowed to retire stock.

This kind of adjustment is common sense everyday business management and that any regulator who has the best interests of the American farmer and the Farm Credit System should welcome.

Thank you for the opportunity to appear.

[The letter dated April 28, 1989, to Hon. Kent Conrad from the Farm Credit Services of Grank Forks, Robert C. Palmer, president, appears at the conclusion of the hearing.]

Senator **Conrad**. Thank you, Bill.

Let us open the hearing for people with questions or comments from the audience. If anyone has a question or a comment on farm credit, if you would go to the microphone, identify yourself, and ask a question or make the comment, we will try to get an answer.

I have a series of questions of my own that we will get to if they are not covered in the questions from the audience. Yes?

OPEN MICROPHONE TESTIMONY

RAYMOND ZAJAC, FARMER, LIDGERWOOD, ND

Mr. **Zajac**. My name is Ray Zajac, Z-A-J-A-C. I am from Lidgerwood, North Dakota. I have a short prepared statement I would like to read. I gave a copy to Amy Finken, but I will read it real quick. I have a few questions I would like to ask afterward.

Senator **Conrad**. That is fine.

BACKGROUND AND CONCERNS

Mr. **Zajac**. My name is Ray Zajac. I am married with four children. I am 41-years-old and farmed all my life and I am trying to keep my farm. The Federal land bank has been trying to take my land from me for 4 years now, and we do not have much time left before the Federal land bank will succeed. The mental stress on my family is tremendous, not to mention the large amount of legal fees which could be used to pay interest to the Federal land bank and the lost productivity on our family farm because of the large amount of time I am away from the farm and/or preoccupied with thoughts of how to keep the Federal land bank away from my door.

WE HAVE MADE NUMEROUS ATTEMPTS TO SETTLE

We have made numerous attempts to settle, but every time they want more money than we have or place restrictions that are impossible to live with. We are presently awaiting an eighth circuit court of appeals decision as to if we have a right to sue the Federal land bank to force them to comply with the 1987 Farm Credit Act. The Federal land bank refused to allow us to have an independent appraisal of our land done when we were trying to restructure.

Having been fighting the Federal land bank for such a long time and using every legal means available to me to keep my farm, I feel that I am qualified to state some of the shortcomings of the 1987 Farm Credit Act.

SHORTCOMINGS OF THE AGRICULTURAL CREDIT ACT OF 1987

One, the main problem with the Farm Credit Act is that there is no means of forcing the Federal land bank to comply with the act. I know that the restructuring plans we offered were better for the Federal land bank than continuing the foreclosure. In my case, we hired two independent appraisers. They were not approved by the Federal land bank to appraise our land. At the appeal hearing, we found that the Federal land bank's inhouse appraisal was $90,000 higher than the two I had done; no wonder we could not restructure. This is when we asked to hire one of Federal land bank's independent appraisers to appraise our farm but we were refused. And to top it off, they figured the cost of continuing the foreclosure would only be 9 percent of the $345,000 value they had on my land. Since then, I estimated the Federal land bank has spent over $50,000 in lost productivity and legal fees, plus loss of interest for the last year and they will get no interest for at least 1 more year since I have yet to have my sheriff sale and I have the 1-year redemption rights. This makes absolutely no sense to me.

The second point is the farmer who lost his land to the Federal land bank should have the right to buy his land back at the same terms as the Federal land bank would sell his land to someone else. But instead, the Federal land bank wants cash from a distressed farmer but will sell to outside buyers for less money and terms.

I have several documented cases where the Federal land bank wanted cash from the previous owner but sold the farm to an outsider for less money and very good terms. If the previous owner could have had these terms, he could still be farming his land. I feel the reason the Federal land bank is doing this is because if they restructure a delinquent farmer, they will still have to keep moneys in their allowance for bad debts account; where, if they take the land from the delinquent farmer and sell it to a new investor, they do not have to keep this money in the bad debts [debits] account but can pull it out and use it. This is what the St. Paul Federal Land Bank did. But I thought the reason Congress was willing to borrow the Federal land bank's $4 billion interest free for the first 5 years was to cover this. But the Federal land bank's only used a little over 15 percent of the moneys Congress wanted them to use to restructure the family farmer.

THE FARM CREDIT ACT OF 1987 IS NOT WORKING

The Farm Credit Act of 1987 is not working. If it were working, the Federal land banks would not have had to sell hundreds and hundreds of thousands of acres of land that they took from family farmers. And the rural farming communities of America would not be dying.

SOLUTION TO THE PROBLEM

The solution to the problem is to order Federal land banks to stop all foreclosures until it is determined that they are following the intent of Congress on this act. The Congress of the United States of America realizes the importance of having family farmers produce the food and fiber for this great Nation. That is why Congress passed the 1987 Farm Credit Act. But it is almost 1 year and 4 months since it was signed into law. Since then, thousands of family farmers have lost or are about to lose their farms.

The Congress of the United States passed the 1987 Farm Credit Act to save the family farmer. It is not saving the family farmer. Now is the time for an investigation to find out why.

Some of the questions—I have three or four questions. The first thing I want to mention is that I have to agree with Mr. Disselhorst on the restructuring—when we received our 45-day notice.

When I put my restructuring plan, I hired two—I asked—to do it for me and we had no guidelines as what to go by. It was just like flying by the seat of our pants. And I do not know how somebody can put out an intelligent restructuring plan if you do not know what the other side guidelines are to accepting it.

And I think in any restructuring or 45-day notice, the guidelines on what the Federal land bank expects you to go by should be accompanied with the 45-day notice so a farmer or his counselor knows what is expected of him and how to organize a successful restructuring page.

The next question I have is on appraisals.

Senator CONRAD. Let us deal with that. Let us deal with each of the questions. Any of you want to take that one on?

Mr. BOHNSACK. Senator, I might have a suggestion at this time. We have a couple gentlemen in the audience who are employees of either the bank or the association, and maybe an issue of such a technical nature might be best handled by them.

Senator CONRAD. I think that would be excellent. Some of the operations people could come on down. Why don't you introduce yourselves for the record and we will make room for you there at the table so you have access to a microphone.

TESTIMONY OF KEN KNUDSEN AND GENE FLEMMING

Mr. KNUDSEN. I am Ken Knudsen, vice-president of Farm Credit Services of Fargo.

Mr. FLEMMING. I am Gene Flemming. I am the director of Producer Credit out of the Farm Credit Bank of St. Paul.

Senator CONRAD. All right. Whoever, of the two of you, is going to answer the question that has been put to us, did you have a chance to hear that question, or would you like it repeated?

Mr. KNUDSEN. I think I heard it.

I also agree with Mr. Disselhorst in something that he said, that it is very important that the borrower take advantage of the opportunity and meet with their loan officer, whether it be FmHA or Farm Credit Services.

We did our best and we had farmer involvement in trying to put together a cover sheet and, you know, policy to make that as explainable as possible. But just the act of negotiations isn't that simple a process, so it does require more than something you can send out in the mail, I think.

And because of that, it is important that you do meet with your loan officer as soon as you get that packet. And I think that that would solve most of the problems that you are addressing.

Mr. **ZAJAC**. That is not exactly the way it happened. In my case, because I was one of the first ones that got the 45-day notice, and I feel—I do not think the Federal land bank knew what they were doing neither when they were refusing my loan.

But I feel that the consideration used for cost of restructuring, I think that calculation should be made available to the credit counselor at the time a person is applying for his restructuring because what we did was we had two appraisals done. We took the average of them appraisals and that is what we used to do our restructuring.

They come in with an inhouse appraisal of $90,000 higher, and mine will never restructure if you are using a $90,000 higher figure. I would not have a chance. But if we knew what the problem was there before we started, we could have went in and negotiated that before we put our restructuring plan in. Now we have our plan in and we have to live with the plan we got in.

Senator **CONRAD**. Let me just intercede, if I might, Ray, and indicate that this is not a complaint I have just heard here today from Ray.

And I do think there is some merit in having some clear-cut procedures on restructuring and on having disclosure of the formula, the calculations, that would be used to determine whether restructuring or foreclosure is going to be the least cost method or the least cost route.

When there is not some general guidelines, it just becomes very difficult for the borrower to know what is going to be expected of him, how the calculations are going to be arrived at. And FmHA has done that. I think to FmHA's credit, whether we disagree or agree with the DALR$ program, it does provide some structure to go through. It has not been explained as well as it might, but it does provide a structure, and I think we need that here as well.

Would either of you gentlemen like to respond?

Mr. **FLEMMING**. Senator, I will respond to that. In June of 1988, we recognized the same thing. We implemented the Ag Credit Act of 1987 in January, and it was the first part of February when we started to send out our notices. In the first interpretation of that, we chose not to disclose the cost of restructure, the cost of foreclosure calculations to the customer, but we soon learned that it made sense to promote effective communication that that be disclosed, and the policy was changed to do that in about the middle of 1988. I think it was June of 1988. So we do, as a common practice right now, go through those calculations with our customers.

I think that Mr. Knudsen hit on the key in that, if this is going to work, there has be an ongoing dialog with the loan officer. And each case is different and the cases are complex and there needs to be communication that exists between the loan officer and the borrower to explain that.

Senator Conrad. Let me just say to you that I appreciate your response but it misses, I think, by a little bit, from what I have heard, needs to be done, and that is, it is not enough to just go to the loan officer and the loan officer talks about what is done.

If there is not something that is put down on paper that somebody can get before he goes to the loan officer, it is hard for him to go through something of that complexity and really focus the attention of himself and advisers that he might have on what kind of a proposal to go and make.

I think what I hear you saying, Ray, is that you need something on paper that gives you the broad outlines of how things are going to be done. Am I right?

Mr. Zajac. Yes. The gentleman that spoke last, now, he revised the plan in the middle of 1988, June or July of 1988. Did you send this revised plan to the delinquent borrowers who were notified before that time? To any of them?

Mr. Flemming. That probably was not done at that time. I would direct that back to Mr. Knudsen, in your case. That was sent out as a practice to start in June of 1988.

Mr. Zajac. So the practice started after the flood of notices went out the first time, and no one that got the first flood got the benefit of your revised plan.

Mr. Knudsen. That would be correct.

Mr. Zajac. OK. The second thing is on the independent appraiser. I received a list of the independent appraisers from the Fargo district, but it seems like the majority, if not all, the independent appraisers either sell land or do work for the Federal land bank.

When I stopped my second sheriff sale, I filed bankruptcy, and during that bankruptcy period the Federal land bank hired an appraiser that came out and appraised my land. And he did appraise it significantly lower than the inhouse appraisals, which still, I feel, was pretty higher than what it would sell for.

My question is: How can you have an appraiser be independent when they get money from FLB—if my land goes back to the Federal land bank, they might have a chance to sell it, or else they are working for the Federal land bank?

Mr. Bohnsack. Ray, we are fully aware that you are provided with a list of appraisers who are not Farm Credit employees and it is your choice to choose one of them. I would think, and you may disagree with me, that when you are paying the bill, he pretty well is going to work for you.

Mr. Zajac. That is a matter of opinion, I guess. But anyway, I feel that there is 10 appraisers for the whole State of North Dakota. And I think and it is my impression—I checked out a number of them, and it seems to me the one that checked out so far is employed by the Federal land bank.

And I think it is tough to be—I feel one time—you guys (FLB) hire them a lot of times and it is tough for me to believe that they are going to look out for my interests as good as they are going to look out for yours.

Mr. **Flemming**. I might add on to what Mr. Bohnsack had said there and maybe reiterate what he indicated in his testimony in that we feel both the appraisal people that are on our internal staff, that is now centralized and separate from the credit function, and the independent appraisers that are available to do the appraisals for the borrowers in situations like yours comply with commonly accepted appraisal practices.

They need to have documentation for the appraised values, how it is supported by the market data within your area, and basically comply with the normal appraisal practices that are commonly accepted within the industry.

So there is some—I think the functions internally are separated between the credit and the appraisal functions, so there is some independence there. And they are nonemployees but actual outside appraisers when they are offered to you for that purpose.

Mr. **Zajac**. OK.

Senator **Conrad**. Let me just indicate that we need to stop for a minute here so that the court reporter can replace her paper. So if you can just hold for a minute, we will stop so that she can do that.

[Brief recess.]

Senator **Conrad**. All right. Ray.

Mr. **Zajac**. OK. I want to go real quickly because I know other people want to talk.

Senator **Conrad**. You bet. We want to make sure that others get a chance. Go ahead.

Mr. **Zajac**. One more question on appraisals. I met with Ken at the Federal land bank, and Clay and stuff, and it seems every time you get an appraisal they want to average the appraisals out. They want to average the inhouse appraisal, which is $345,000, with my appraisal, which is from the—one of the bankruptcy.

To me, how can you average one that is—if one is $90,000 higher and one is in between and one is a little lower, how can you average all these appraisals? Seems like they are using an inhouse appraisal at $345,000 to average increase any other appraisals that I get. And I was wondering how do you rationalize that?

Mr. **Knudsen**. I think what the regulations state is that we give you an opportunity for a third-party appraisal and we have to consider that in our analysis.

And by considering it, we can consider that whether it is relevant or not. I think we give the benefit of the doubt by being willing to average that with our own appraisal. Somebody else was mentioning earlier that we do not consider averaging when the other appraisal is lower, and there is an example that that is exactly what we offered to do.

Another thing Mr. Disselhorst said—he says a lot of things that I agree with—he also says you can get appraisers to appraise for whatever purpose you want. And that is one of the concerns in this process that we share.

We usually come in about half way—half of the time we are higher and half of the time we are lower than third-party appraisals. So that gives me some reason to believe that our internal appraisals are pretty close.

But you can probably, since you are paying the bill, get people to appraise it higher or lower. That is a concern of the overall appraisal process. That is why averaging, I think, was a fairly fair offer.

Mr. ZAJAC. My next question is, I think it was Mr. Bohnsack that mentioned on first refusal. And I know several cases where farmers were offered land for a cash price at a certain price, but it was sold for a lower price and they were not notified.

What action do these farmers have against FLB if they were not notified and land was sold for a lower price than what they were offered on first refusal?

Mr. BOHNSACK. I cannot speak to what happened in that instance, but I would just remind everybody here that that would be totally against the act, if that indeed happened. And we feel we have done everything to comply with the act.

If that is a specific interest, if it is a valid case, I think we should get together with some of the people here and talk about it privately. And if it is indeed relevant, we would provide you an answer and also the Senator.

Senator CONRAD. Let me just indicate on that point, Ray, if I might, that others have raised that same concern. In the Dakota Resource Council's testimony and recommendations, they have indicated that Farm Credit Services has sold land at sheriff sales or auctions without allowing the farmer/borrower to exercise his right of first refusal.

Now again, I know that it would be difficult for you to respond without the specifics. But I think we ought to get the specifics that are behind that assertion and ask for your response. I intend to do that and give you a chance to respond. We will hold the hearing record open for 2 weeks so we can get a response.

But I will ask the Dakota Resource Council for the specific cases and then ask you for a chance to get your side of the story so that we have a full record.

Mr. BOHNSACK. That is a reasonable time, Senator, and we will respond.

Senator CONRAD. Thank you very much. Ray, go ahead.

Mr. ZAJAC. One thought came to me when you mentioned it costs $2.36 (sic) or $1.80 for every dollar we got. Is that over the whole 15 year period or 10 year period?

Or is that—if that is over the whole 10—15 year period, that sounds reasonable to me, if you pay back $1.80 for every dollar you get. Or it is over a shorter period of time than that?

Do you understand the question I am talking about? You said it costs $2.36 (sic) for every dollar you got from the Government, or something.

Senator CONRAD. Ray, I think that is—I am not sure that is a truthful thing for us to pursue right now, because the man who made the assertion is not here.

Mr. ZAJAC. OK. My last question is, in the press, Larry Buegler is quoted from the third or fourth quarter report through a letter, and he said the restructuring act requires us that we can appeal to the National Special Assets Council. How do you do that?

Mr. BOHNSACK. I am not going to address that. I will let someone else. But your first issue, and this is to both you and the Senator, you raised some concern about the accuracy of the cost of that money. And I think maybe we owe it to you specifically to track that down and provide you with documentation that that is indeed correct or if that is not.[1]

Senator CONRAD. I would appreciate that

Mr. BOHNSACK. Perhaps, sir, you should restate your question for one of the gentlemen here.

Mr. ZAJAC. OK. In the third or fourth quarter report from the Seventh District, Larry Buegler, in his letter, referred to that if a delinquent borrower was turned down on his restructuring plan, he could appeal to the National Special Assets Council. How do we do that?

Mr. FLEMMING. OK. This is part of the provisions of the Agricultural Credit Act of 1987. And it relates to financial institutions that have been certified and receive financial assistance from the Financial Assistance Board.

Any institution, any Farm Credit institution, that receives assistance and is certified is required to set up what is called a district special assets group. And in our district, that is made up of executives, management, myself, and some other loan officers.

We are required and charged that on any restructure denial that occurs on a Farm Credit bank real estate loan after October 6, 1988, the date we received financial assistance, that we review that at the district level, and that we forward that to the National Special Assets Council, which is part of the Financial Assistance Board, and then they also review that.

So restructure denials have the opportunity to be acted on locally, to go through, like, the Credit Review Committee hearing locally, on which a district board member participates now, then they come in and are reviewed by the district special assets group, and then they go on to the National Special Assets Council.

And in each step of the way, they are reviewed to see whether or not borrower rights were complied with.

Senator CONRAD. Mechanically, how would a person ask for the review?

Mr. FLEMMING. Well, it happens as a matter of routine on any denial after the day we have been certified, October 6, 1988. So if the denial occurs that day or thereafter, then it falls into that required timeframe for the act.

Mr. ZAJAC. What you are telling me, then, I was turned down in April, so I do not qualify for reconsider, huh?

Mr. FLEMMING. Well, the denial—technically, the denial would be after that. If there would be another denial of an action that would occur now, then that would follow this process.

Mr. ZAJAC. I put in another plan to pay off my loan and that was turned down too. Now, being that was turned down after October 6, can I take this, my last plan, and request to go to the Special Assets Council, or not?

Mr. FLEMMING. Well, the review by the—all of the steps in there are a result of really going through the formal process of making the application for restructure, having consideration by the local level, going through the hearing at the local level, and going through those other steps.

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[1] See material supplied by Farm Credit Services, St. Paul, MN, letter dated June 6, 1989, exhibits A-D, pages 322 to 331.

Senator CONRAD. The date was October——

Mr. FLEMMING. October 6, 1988. That is the date we received the financial assistance.

Are you making the request as to whether or not you can follow the loan and be reviewed at all of these places?

Mr. ZAJAC. Yes. I was turned down in April.

Senator CONRAD. April of?

Mr. ZAJAC. 1988.

Senator CONRAD. April of 1988. OK.

Mr. ZAJAC. So now I do not have no chance to go to the Special Assets Council.

Mr. FLEMMING. Let me expand on it because I have touched on one of three areas that happened when we received financial assistance.

That special assets group that I talked about not only deals with the restructured denials after October 6, 1988, it also deals with any unrestructured nonaccrual account that would exist as of October 6, 1988. And from that date, October 6, 1988, we have 6 months to conduct a review of each one of those.

So that review of those loans needs to be done by July 6, 1989. We are about half way through with the review of all of those loans in the district right now.

Senator CONRAD. Ray's would be——

Mr. FLEMMING. So Ray's would be reviewed under that process.

Mr. ZAJAC. OK. Thank you very much.

Senator CONRAD. Thank you, Ray.

Before we go to our next witness from the floor, and we will do that momentarily, I would just like to ask a couple of quick questions.

One of the assertions in the Dakota Resource Council testimony is that borrowers have, at times, been denied access to their files. Can you tell us if that is an unusual circumstance or is that standard policy? Is it policy that a borrower has access to his file or not?

Mr. FLEMMING. The basic and typical policy with regard to access to information is any information where the borrower has signed, like the balance sheet, or any signed information, any borrower submitted information, the borrower has access and can get copies thereof. A borrower can get copies of the appraisal report if he is an existing borrower. And the other—there are elements of the loan file that are considered confidential to the financial institution.

Senator CONRAD. Let me ask a followup, because I think one of the concerns is if a borrower is turned down or denied, is he told the reason for the denial? For example, if he makes a preliminary proposal and is denied, is he given the reasons for the denial?

Mr. FLEMMING. When I mentioned that we were reviewing unrestructured nonaccruals, you know, that were in existence as of October 6, that amounted to about 2,400 loans. And we have reviewed over 1,200.

And I think unquestionably, in the review of those files, I could say the reasons for the denial are stated in the denial letter and are communicated to the borrower, and the borrower is given the opportunity to request a Credit Review Committee.

Senator CONRAD. All right.

Mr. DISSELHORST. Senator, if I may comment briefly on that.

Senator CONRAD. Yes.

Mr. DISSELHORST. This question of the sufficiency of the reasons for the denial has been raised by a number of groups, including FLAG and Jim Massey in a letter to Senator Conrad about a month ago. And it is a significant problem.

I have an example attached to my testimony of the reasons given for denial. I do not think this is sufficient. Let me read to you exactly what that reason was on the denial:

> Your application for restructuring under the Agricultural Act of 1987, * * * has been denied for the following reason:
>
> The cost of restructuring your loan has been determined to be greater than the cost of foreclosure.

End of reason. I do not think that is sufficient. Mr. Massey does not think that is sufficient. I do not think that gives the borrower a method of determining how or why the cost of restructuring was——

Senator CONRAD. Where is that example?

Mr. DISSELHORST. Excuse me?

Senator CONRAD. Is that example from North Dakota?

Mr. DISSELHORST. Yes. It is a North Dakota case. In fact, the Bismarck-Mandan district.

Senator CONRAD. I do not think anybody who is reasonable would say that is—I mean, that does not tell anybody anything.

Mr. BOHNSACK. Senator, I have had the opportunity to sit on a number of those committee hearings and I have had to signoff on them, sign the minutes and the letter that goes back to the borrower.

I cannot cite every instance, but there are several different reasons that come to mind that have been pertinent in the various instances. One could be the viability of the unit after the restructure. Another might be the collateral value. Third one might be lack of income.

There are many things that go into these letters other than cost of foreclosure—or cost of restructure exceeds the cost of foreclosure.

I can only speak to the ones I served on, of course, and yet my fellow district board members that serve and do this same duty in other areas, this is what I am hearing from them also.

Senator CONRAD. Let me just say, I was in the Soviet Union about a year ago at this time, and I remember meeting with a young man who wanted to leave the Soviet Union. He had applied every year for 11 years and every year he was denied. The most recent year he was denied, because of perestroika and glasnost, he thought maybe for the first time in 11 years, he could inquire as to why he had been denied. And so he went to the local board of the Communist party and said, "Why was I denied?" And the answer came back, "It is none of your business." [Laughter.]

He did not find that adequate. If we were that borrower and we were told just that one sentence is the reason you are denied, I think we would be upset.

I mean, there has to be some calculations given. There has to be some rationale given to a person, it seems to me, if we are going to deal with them reasonably. It cannot be a one sentence, well, blah-blah-blah, you are denied because foreclosure costs more, or is better for us than restructuring. It just seems to me, in fairness, that we have to tell somebody more than that.

Mr. KNUDSEN. I think we agree with that. If I spent 20 minutes with you across the desk and showed you the different reasons, the calculations, the projections, and those types of issues, and you agreed with me and understood and went home, the letter you will still receive would say the cost of foreclose versus restructure.

Although that is the final summary statement, and it is an accurate and true one and best depicts what actually is the answer, that does not mean that that is the only discussion that is been handled between the two people.

Generally, you do not get a cold bullet-point letter with no explanation and that is it. So just to make sure you understand that.

Mr. DISSELHORST. Certainly I would concede that the borrower can, of course, call the lender and find out some more reasons. There is no question that the borrower can do that.

But quite often, the letter was just that blunt and there was no further communication, not because the borrower did not want to know but because the borrower did not know there was any other information to be had.

Unless the lender tells the borrower, gives him that worksheet, shows him what it is, then there might be some questions in the borrower's mind as to how he arrived at these figures. But unless we give him that sheet, they are never going to know what the numbers are. They are never going to know there is anything else to be had.

Senator CONRAD. Maybe I can ask one other question. I do find that troubling, if people are not given adequate reason in writing. I do not mean some 20 page deal, but I think a person ought to be given some pretty good idea of what it is that is the reason for the denial.

Another assertion is that a farmer's preliminary plan cannot be modified once it has been submitted for restructuring and that restructuring has been denied on the basis of the preliminary plan.

Is that accurate, that people have been denied on the basis of preliminary plan and are not given the right to modify the plan based on the discussion?

Mr. FLEMMING. I am going to start this from a district perspective and then have some of the people that are actually doing the loans speak to this as well.

Senator CONRAD. All right. That would be very helpful, I think.

Mr. FLEMMING. I think it deserves that kind of attention. I think a technical approach could be taken, and that would indicate that you are offered the application, the person fills it out, it comes to the lender, the lender could say it would be incomplete, the lender could say that it is not reasonable, the lender could consider it to be a one type thing, turn it down, go through the process. I think that is a possible scenario, but one that has not been employed by our district, in general.

The general direction has been to work with the customer, you get the application back. If it does not quite have everything, the loan officer arranges a meeting with them. They sit down across the desk, face to face, try to gather up all the information, trying to work out a reasonable arrangement to restructure the loan, so that we are not merely going through the formality of going through the process but actually being constructive in restructuring the loan.

And that would be the way that I have observed it handled as I have reviewed loans across our four State districts.

Maybe Ken, you want to talk a little bit from a service center perspective to that.

Mr. **Knudsen**. Yes. I would say that is what happens. That is what is so critical about coming in with the loan officer at the outset.

Again, I think one of the things to be sure we are discussing here is improving a successful program because, as you stated yourself, the Seventh District was well into the restructuring program before it was mandated. And the percentage of restructures versus loans in litigation shows that well over 90 percent of the time we are successful in some type of restructure without going to the courts.

But getting back to that specific question, the reason most of those get resolved is if there is something——

Senator **Conrad**. Let me stop you there. You cannot go to court against Farm Credit, can you?

Mr. **Knudsen**. You certainly can. The cases that have not been resolved have been in the courts for several years.

Senator **Conrad**. Well, one of the——

Mr. **Knudsen**. You are talking about the private right of actions, as far as being able to sue us.

Senator **Conrad**. Right.

Mr. **Knudsen**. That is true, that that is not a right, but that does not mean that we do not end up in the courtroom on these issues. Because the courts, we are in there all the time.

Mr. **Disselhorst**. Right now, according to FLAG, those cases are mixed in the different circuits. Some give you the private right of action to sue Farm Credit Services to abide by the act, some do not. It will probably be a matter decided by the Supreme Court eventually.

Mr. **Knudsen**. It is best if somebody came in with a projection or a proposal that was clearly inadequate, rather than send out a letter denying it, that is when you get together and try to use some alternatives of what might work. And that is generally what happens. And that is why there is such a high success ratio of getting restructures.

Mr. **Disselhorst**. I just have one quick question for you. Who do you think should take the initiative in getting this togetherness and working on a possible plan? Should it be the lender if the lender realizes that the plan submitted is not adequate?

Mr. **Knudsen**. Well, if your house payment was behind and they were going to take away your house, I would like to think that you would be interested in going in to see your lender, beside the fact that they would like to see you. But I would think that the borrower should initiate that meeting.

Farm Credit is not a lot unlike FmHA in that, with the volume of restructuring going on, we, too, are not staffed to go out and meet with everybody that has a distressed loan. I would like to see that the borrower initiates that. I think it would probably work best for everybody. We have no problem with taking the time to meet with everybody that wants to come in and talk about their loan.

Senator CONRAD. Could I go back for 1 minute to this question about being denied access to a borrower's file? It goes to the question of people understanding why they have been denied or not understanding it. What is the reason that access to any part of a file would be denied to a borrower?

Mr. McLAIN. Senator, I think we are constantly being reviewed by the gracious FCA again in complying with the privacy acts that we are considered having to follow.

And I guess in our association, I am aware that we have gotten written up on some things through the audit review process that we were not tight enough in even our loan files, which is another requirement of I think the district bank, that each loan file should have a loan officer's assumption of the operations of that farming operation. In his own words, what he views the management capabilities, and so forth, are.

They are strictly for the purpose of, if that loan file changes to another loan officer, it will give that loan officer some background as to the operations of that file. However, sometimes that loan officer may write something in there that probably could be construed by the borrower as, that guy is just totally not supportive of him as a person.

I think Mr. Flemming addressed that, that anything that is pertinent to numbers, the loan—the borrower has access to that totally.

Senator CONRAD. Well, let me just say this to you. I have been in the tax business which is, you know, you have files on people who owe money to the State, and it is not unlike being in this position, being a creditor.

You know, in other areas a person who is affected by what might be in a file has the right to know what is in that file so he can challenge statements that may be inaccurate.

For example, if you have a credit history on file with the credit agency downtown, you, as a matter of right, are able to see what is in that file so that if there are mistakes made you have a right to challenge it to make sure that the information there is correct.

Why should not that be true here? Why should not a person be able to know what is in that file and be able to, if there are things in it that are just incorrect—people do make mistakes—have a right to correct it? I mean, if I said in a file that—well, I do not want to personalize it, but if I had a file on somebody, and I am human, I make mistakes, and I had something in there that is just wrong, and as a result deny that person a restructure or a loan, should not that person have the right to get the mistake corrected? How do you get it corrected if you do not know it exists?

Mr. **McLain**. I would like to believe, Senator, that any credit decision based on whether a loan is made or not certainly is not based on the comments of the loan officer's personal assessment of that operation. It is the hard fact figures because it is seen by more than one person.

Senator **Conrad**. Lyle, did you hear the mumbling that occurred in the audience? I think there are some doubters.

Mr. **McLain**. Is that right?

Senator **Conrad**. We know how people operate. I mean, if you go into the file and you see this guy is, you know, he is not taking care of business, obviously that has a powerful influence.

That is not the thing I am getting at so much, frankly. It is just an outright mistake. Somebody puts in numbers that are wrong and as a result of that does not get corrected, nobody has a chance to correct it because they do not have a right to see what is in the file.

Mr. **Knudsen**. I think that is a good point. We are consistent with other lending institutions in that those items in the files are confidential and not available to the borrower. We are not unique in that. Your banker would be the same situation. So maybe that is an issue higher than us as to why that is the way the banking rules are.

Secondly, on the credit bulletin type of thing, that is something a third-party can request information on you and have available, and that is the reason for public disclosure. Because if other people have access to that information, you have to, by law, have right to it, too. But no other people have right to your loan file, other than in the courtroom under discovery.

Senator **Conrad**. Back to the audience.

STATEMENT OF MONTY HAUGEN, FARGO, ND

Mr. **Haugen**. My name is Monty Haugen. I just got in this afternoon. I drove like heck to get here from Fargo. I missed the first half.

You were just talking about up here right now that you had such a great success with the farmers reorganizing, and something like that. How come you are selling all this land out here that we see in the papers? What is going on? We are trying to find this out. Another question I want to find out——

Senator **Conrad**. Let us take them one at a time so we get a chance to get the answer to the question. The basic question, as I hear it, is if there has been all this restructuring, why is all this land for sale?

Mr. **McLain**. I will speak for the northwest part of North Dakota, which is 17 counties. It is operated out of Minot, Williston, and so forth.

We had the darnedest raft of farmers walk in and say: "Here, it is yours. We are not making anymore payments. Cancel our loan."

And it was totally uncontrollable. We foreclosed on very, very few acres of land but yet we received 150,000 acres back. I do not know how we can stop it——

Unidentified Speaker. Point the gun at the man's head and——

Senator CONRAD. Wait. Wait. Whoever that is, wait a minute now. We have somebody before us on the floor. We are going to do this in a well ordered way.

Monty.

Mr. HAUGEN. I do not believe what you are telling me is true. Because I have worked with a lot of farmers and ranchers all over the United States. I do a lot of traveling. I work with them.

I see what Farm Credit Services is doing. I have been in a lot of Farm Credit Services offices. That young loan officer, he does not know what he is doing, right off the bat.

We even, in fact, tried up here in Minot to get the head honcho up there to talk to loan officer, and wrote him 3 weeks, 4 weeks ahead of time. Talk to him. You know what the answer was? Oh, that loan officer can handle it. He does not have the authority to do it.

Somebody is not behind the eight ball here trying to get this thing going. When you run a man into that office 8, 10, 12 times, just like FmHA does, that man is awful sick of running on the road all the time.

So here is the question I am going to turn around and throw at you now. How come when you get somebody else's ranch or farm out here you turn around and sell it for a heck of a lot less than what the debt was?

Then you turn around, in some cases, you give a 5-year loan to a guy with no interest on it for 5 years, just the principal, or maybe, on the other hand, you got 5 percent interest on it, why don't you give the same consideration to that farmer that you are foreclosing?

Because I know to this day, 99 percent of them just about would not make it, but you are not doing it. I would like to have an answer on this.

Mr. MCLAIN. OK. I am going to let Gene Flemming—the loan program that that was operated under was a district program and we had nothing to say about it either. That will come out of the district bank because basically, when that land is acquired, it belongs to the district bank in St. Paul and we are only the agents to service that problem.

Mr. HAUGEN. Before you foreclose on a guy, why don't you offer him that same deal?

Mr. MCLAIN. I will let Mr. Flemming handle that.

Mr. FLEMMING. First of all, it is going to be a—I think in general we have been selling acquired property at higher than 100 percent of its appraised value. All of our statistics——

[Audience mumbling.]

Mr. FLEMMING [continuing]. Let me say I said in general. We know there is cases where property is sold under the appraised value, especially in areas where the property is difficult to sell, or the salability is not there, or whatever. To get at a specific case, then we need specific details to work with.

But under the first right of refusal, if we acquire this property, the person has the opportunity to buy it back at appraised value, first of all. We have to go through that step. Then the person has a right to make the offer. And we have to receive an offer that is really higher than that to sell it to anybody else.

Mr. HAUGEN. You are still not answering my question. Why don't you offer this deal to him before you accelerate or foreclose on him—5 years without interest—like you do it when you sell it to somebody else, or 5 years with 5 percent interest? Why don't you offer that—you have the right to do that. Do not tell me you cannot because you can.

Mr. FLEMMING. Ever since the beginning—the middle of 1986, the beginning of 1987 for sure, we looked at individual loan cases and tried to determine whether or not we can restructure the whole loan and keep a relationship there, whether there is some borrower concessions and some lender concessions that will work out and cause that to be the best outcome.

The next alternative that we had was a partial restructure or work out, work down, situation where maybe we accept part of the property in a deed back fashion, the person keeps part of his property on a restructured basis. And that alternative worked in a lot of cases.

The next alternative that usually is looked at is whether or not that person has the ability to somehow or another receive cash, be able to pay us out, from either another lender or from relatives, or whatever.

Another alternative that is looked at is a full deed back. And foreclose, typically, is always our last alternative.

I am speaking very general in terms of the strategies that have been employed by the district over a period of time, but those are the ones—that is the direction that has been given.

And I think we have a case here where if there is a specific loan that needs to be talked about, we need to get the specifics of it and do some follow up again to try to address the concerns that you are raising.

Mr. HAUGEN. I think, Senator Conrad, I would recommend that you take it to the full Senate hearing and I would recommend that you would bring it up to the Senate that these farmers have just as much right for write-down of the loan with no interest for 5 years or 5 percent loans. I think they should have the first right of doing this before they accelerate or foreclose on them, because we are not giving the people a chance out here for them. There is too much of it.

STATEMENT OF ROSS OLSON, FARM CREDIT, GRAND FORKS, ND

Mr. OLSON. I am Ross Olson. I am senior vice-president at Farm Credit in Grand Forks, and just to speak to a couple points that Mr. Haugen made.

First of all, when we sell property, with financing in place to a third party, that we have acquired, there is a downpayment, and a significant one, that goes along with that. So there is capitalization of that loan asset. Secondly, some of the terms that have been thrown out, such as no interest for 5 years, I along with a lot of other people would like to get one of those deals and I would like to find one. Because there have not been any of those in my corner of the world anyhow.

Senator **Conrad**. Have there been deals that are like that? I do recall the ads that ran—that was kind of a hot point a number of years ago.

Mr. **Olson**. There was a sale program that did provide some incentives in terms of lower interest rates that go back 2 years to 2½ years ago. The experience that most of us had found that there were not a lot of people that took advantage of those programs. But they were available and—but they did also require people to capitalize those purchases with significant downpayments.

Senator **Conrad**. What kind of downpayment was required?

Mr. **Olson**. Typically, 20 to 35 percent downpayments.

Senator **Conrad**. All right. Monty, do you have another question there?

Mr. **Haugen**. Well, I would say that maybe what you gentlemen should do is look on the Seventh District annual report, on page 40, on Curt. In fact, we got it right here. I will not get into it, but I think the gentlemen could answer that thing down there. OK.

Curtis Watson, a member of the board of directors of Farm Credit of St. Paul, has farm real estate loans and had other loans. These involved more than normal risk collectibility. Due to the size of the loan compared to the appraised value of the collateral, the terms of the farm loan were formally changed in 1980 to the following: $54,000 principal with an 8 percent interest rate was paid in January 1988; consideration for the release of his homestead and 25 acres collateral, $251,000 of principal with interest payable annual at 8 percent; 1992, $55,000 principal with no interest is payable on April 1, 1992.

Now, you say you never heard of nothing. There is something wrong. Senator Conrad, I would like to have you get a copy of this. It is showing—it is contradicting what is going on up here.

Senator **Conrad**. All right.

Mr. **Bohnsack**. Monty, if I might address it a little bit. I think you are mixing a couple different issues here. In Mr. Watson's instance, it is a restructure. It is not a sale of acquired property. He was able to negotiate a situation here. It was written up by the appropriate people, as is described here. Mr. Watson serves as the director at large on the Farm Credit Board of St. Paul and he is subject to different qualification requirements than are the other four elected directors.

[Audience mumbling.]

Senator **Conrad**. Wait a minute now. One thing we just cannot do is interrupt and have displays where we express disapproval. We have to show respect to everybody here when they give an answer to a question. So I would ask you to show respect.

Mr. **Bohnsack**. If I might continue. I want to emphasize that when I said subject to different requirements, they are not necessarily better requirements.

But the outside director position was an interim situation to get the Farm Credit board of directors from the position they were in, where at one time there was an appointed director, then there is an elected director at-large, and the next step in the process will be the appointed outside director.

And during this interim period of time, by whatever quirk of fate, there are a few different requirements for whoever serves in not only our district, but other districts as well.

Mr. HAUGEN. I think I want to run for the Farm Credit board, then. Maybe I can get a better deal, too.

Mr. BOHNSACK. We are not getting—let somebody else try here.

Senator CONRAD. Do you have another——

Mr. HAUGEN. Next question I want to ask, and I agree with Mr. Conrad on this here get your record—just like FmHA. You can get into the FmHA. You can get your whole file for 10 cents a piece. I think that is the best thing that ever happened.

I think what we should have is Farm Credit the same thing. The gentlemen or the ladies that want their records, they can pay 10 cents for it. Too many times we go into a Farm Credit Service office, before they go in the office, they look for something else, they grab that record book just like there is something wrong.

Senator CONRAD. Say Monty, let us go on to another subject because I have raised this issue already.

Mr. HAUGEN. This is coming out. The modified plans, I think, which has been done, where people have come in and done plans and we have redone plans, and I think it should continue with it. I have heard a lot of people that are not getting it done. And it should be done. This is my comment as of now.

Senator CONRAD. We will go to this side and this gentleman and then we will come back over to the other side. Do we have people waiting? Are the people sitting in the aisle waiting? We have a number of people there. All right. We will go to this side and then we will come back and allow you to ask your questions or share your comments.

Yes, sir.

STATEMENT OF RAY BIEBER, FARMER, MOTT, ND

Mr. BIEBER. Senator Conrad, panel members, I am one of the farmers that done it all. I have deeded over, I bought back, and I have restructured. I guess really what I want to say to you, Senator Conrad——

Senator CONRAD. Please identify yourself for the record.

Mr. BIEBER. I am Ray Bieber from Mott.

Senator CONRAD. Can you spell that for the court reporter?

Mr. BIEBER. B-I-E-B-E-R.

Senator CONRAD. Thank you very much.

Mr. BIEBER. I guess my biggest concern now is the tax liability that, when you do this, that you have. Ours was tremendous. It is basically the capital gains. We bought the land more reasonable and our capital gains was quite high. And you know, something should be done about that. If something is not, it is going to put them people right back to where they were.

Senator CONRAD. Let me share with you I am introducing a bill to resolve that issue. We have worked on, for months, getting a bill that addresses this very issue. It will be introduced in a few weeks.[2]

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[2] The bill is entitled the Farm Debt Tax Reform Act of 1989, S. 1041, introduced May 18, 1989, by Senator Conrad.

We have worked very hard with a lot of people to develop a bill that has a chance of passage. Because that is all that counts. You know, we can introduce a lot of legislation that cannot pass. It does not mean anything. We have a bill we have worked very hard on so it can pass.

Congressman Dorgan will be introducing that legislation over on the House side as well. It will go a long way toward taking care of this problem.

Mr. **Bieber**. Thank you, Senator.

[The prepared material of Ray and Bonnie Bieber appears at the conclusion of the hearing.]

Senator **Conrad**. You bet. On this side, sir.

STATEMENT OF HAROLD FENSKE, FARMER, HANKINSON, ND

Mr. **Fenske**. My name is Harold Fenske, F-E-N-S-K-E. I am from Hankinson, North Dakota.

Senator **Conrad**. Thank you.

Mr. **Fenske**. I have two questions I would like to address.

First one is referring to the gentleman from St. Paul. This new law that came out in June, or I do not know if it is a law, but they send out now to the counselors how to restructure.

Now, I was sent out my package last winter, in the later part, early part of spring. They asked me to get some counselors. I hired some counselors that cost me quite a bit of money. My whole thing was done prior to June. We was not given any guidelines. We were not asked to come in, just to send in our restructure. We were denied. We also went back in with the appeal and we were denied.

This all took place before this come out. If we could have had this, it would have helped. Is there something now I can reopen it? Because the decision has been made. We lost the appeal. We have had the sheriff sale, and I was sold out on the second of February this year.

Maybe if I had these guidelines we would have known how to do things, it would have probably helped an awful lot. My question is, if it is cut and dried, is there a way I can open it up and go back in and try over?

Mr. **Flemming**. What stage of the process are you in right now? I am not sure that I totally understood.

Senator **Conrad**. Sheriff's sale has already occurred.

Mr. **Flemming**. You are in the redemption period?

Mr. **Fenske**. That is right.

Mr. **Flemming**. We have negotiated with people as they are in the redemption period of the foreclosure process. At that stage of the game, basically, what the organization has to do is look at the economic decision and what we as an organization can afford to do when we are at that stage of the game.

So there is opportunity to talk about that. The options are probably more limited given all that you have been through at this stage of the game when we look at what is the best economic return for the Farm Credit organization, because we have to be financially responsible to all of the stockholders that are in the institution.

Mr. **Fenske**. The reason I ask this question is because this law was written and it was put into effect in January and, I do not know, did Congress add something, too, that you come out in June and come up with something new that helped the people in the rest of the year? Or it was just something that was more clarified to help out the rest of the people?

Mr. **Flemming**. I think in June it was a policy decision to clarify and promote better communications because we had heard of some problems, some communication problems.

But I would like to back up a little bit. Since the last part of 1986, we have been restructuring loans and we, in the first part of 1987, offered some of the best settlements on nonaccrual accounts that we did throughout time. I mean, we restructured loans, and the interest rates were lower at that time, but we restructured loans at 8 percent and 7 percent and at appraised value, and we cashed out loans at certain levels.

And as we moved forward and got through a lot of the restructuring that we needed to do within our district, we were able to take more time in doing it. We were able to analyze things better. We looked at each individual case more.

The deals kept getting more stringent and more stringent and were, basically, economic decisions made for the financial institutions. And all of that was very compatible with what was adopted in the Ag Credit Act of 1987.

So there has been a long history of restructure efforts, I think, throughout the district, and that is kind of the scenario.

Mr. **Fenske**. First a comment. I have been helped out by an organization on the PCA part greatly, which I am real appreciative for. It is my land that I farmed all my life that I want to protect.

And the other comment I would like to make for Senator Conrad to take back to Washington is when they were driven up against the wall back in October, when we was forced—when we were supposed to have our first sheriff sale, we did go into a chapter.

And we were in the chapter approximately a week or so, and the bank, excuse the expression, one of their attorneys, we call him "ax man" out there in the country, but right away put a petition to petition us out of bankruptcy.

Under chapter 12, you are supposed to have 120 days. We were given just a little bit over 30 days and they went to court and they petitioned me out.

Where if we could have had that opportunity—I hope it does not happen to a lot of other ones, because the chapter 12 is supposed to give you a chance to try to work things out. You take a plan, it is not quite right, you remodify it. I did not get that chance. Thank you.

Senator **Conrad**. All right.

STATEMENT OF AVONE KUKLA, FARMER, GRASSY BUTTE, ND

Mr. **Kukla**. My name is Avone Kukla.

I am back again. And Senator Conrad, I have talked to you in November of 1988, in your office. I have asked a lot of questions pertaining to the Federal land bank. And I am glad 100 percent that you have brought up these questions for me.

But I will ask again, but I will tell you first what happened in 1983 when the Federal land bank—when I assumed the loan with them. At this time, I have called Federal land bank. I have bought out one of my uncle's lands and took over a note he had had in the previous years.

Senator CONRAD. This is in 1983 now?

Mr. KUKLA. Yes, it was. I have also taken out a note earlier from my uncle back in 1976 or 1977. But in 1983 we were going to borrow just so much money and that was it.

Well, it went on for 2 weeks and the Federal land bank officer says no. He says: We cannot borrow you just so much money. You got to borrow this amount, *x* amount of dollars, besides borrow another *x* amount of dollars to buy 50 head of more cattle, or 100 head, or whatever, or, say, $50,000 extra that we did not want.

Senator CONRAD. Do you recall what those numbers were?

Mr. KUKLA. Yes, I do. It was $113,000 what we wanted to borrow. They said no. We have to borrow another $50,000, or buy cattle, besides an additional amount, which come out to $210,000.

But at the time when the note was closed, we said no. We only want $113,000. He said: No. Federal land bank will not allow that. You have to borrow this amount of dollars. OK.

At this time, when the officer came down from Federal land bank to make us sign the papers, we asked, could we read those papers and study them before we sign them?

No. We only have so much time. We got to get them signed and I got to get back up to the office. Instead of having us look and read what we were signing for, he just opened the page to where it says your signature.

They would not let us know what was in those papers, on those files. Well, it went on for about 5 years. And I have been fighting them every year to get that interest lowered down.

It was a tough battle between my wife and family to struggle. We had drought. That first year we had a heck of a snow storm in April of 1984 that took almost all the cows we bought and lost all their calves. We had ended up with scour problems. We could not hardly make ends meet.

I worked 24 hours a day for 4 weeks solid to try to make ends meet. I might catch a little catnap in between hours. But the point was you ruin your life trying to make ends meet. When we wanted to lower payments, we wanted less money, they said no. OK.

Now, the factor came as of October of 1988 and of November 1988. I went in to the office, with witnesses, and I will testify. I have talked to quite a few spokesmen here that were, you know, during the summer months that have encountered the same problems.

But there was something kind of drastic that went on last spring and summer that kind of led me to this. They would not send me a mortgage copy, and I requested that right away. They did not fill out all the blanks on the mortgage copy when I requested. They said, we will do that in the office but please sign here. OK.

We have not, and I will repeat we have not, received a copy from the Federal land bank for 5 years of our mortgage. So we finally went up to the courthouse and received the copy and, boy, did we discover a problem.

This has brought my attention right away. It got all the Federal land banks guys, officers, in that Federal land bank nervous. They would not let me see what is in my files, because when I started asking for copies they got nervous, got scared, and said no. But I had enough witnesses to testify.

They came at all angles just to give me an answer to write me off. They tried to sell me out here a couple years ago, in the spring. And I said no. I said that will not work. Them CRP programs will not work because I cannot put my land all in CRP. But what they are trying to do is get me so down so I had no place to run or to do or to operate anymore.

At this time, I decided I am going to do something about it. I had came in unexpectedly. I did not address myself, why I was there, and what I wanted to see. I did not say what we were coming for. I went in and caught them off guard. OK.

They were giving me some of the copies of my records, but some of the copies they were not supposed to give me we found out what they were. There was things going on between FmHA and the Federal land bank that I did not know of. There was fraud involved in there that we found now.

Now I think they are trying to get a lot of my records covered or clear or shattered so we do not have proof. But they are mistaken now. So at this time, we are still looking forward to see what happens.

Since that time, as of December, we made the payment. We had a hard time doing it. Came January 1, they upped our interest and a lot of the farmers. The question I ask of the Federal land banks guys is: Why are we paying for other peoples' interest when they are on 8 percent—I got neighbors on 8 percent and I am on 12 percent?

They said, well, you can make it and they cannot, so somebody has to pay for their interest. I said that is not fair. I did not take that loan out to pay for somebody else's interest or write-down.

So another month later I said, oh, I got another raise to 12.75. Just last week I got another interest raise to 13 something. This is way beyond what I can pay out now and this is way far more than what we can expect out of our crop.

The cattle prices dropped, the calf prices dropped. There is something going on. The wheat prices dropped. The grain prices dropped. Sure, they look like they came up, but we are not getting the PIK payments like we were anymore. That is down. The ASCS has been——

Senator **Conrad**. Let me just stop you there because we cannot go into all that. We have got to stick to credit issues here, or else we will be here for the rest of our natural lives.

Mr. **Kukla**. OK. What I am trying is say is there has been a lot of stuff involved, and what it is coming to is that the ASCS, FmHA, all the lending agencies, Federal land bank and all, are getting us to a point where we cannot make it anymore and what is it—and they are going to close out and get the land——

Senator **Conrad**. Let me just interrupt again. Other people have got to ask questions. If you have a question, let us get the question out so they can get it answered and let other people have a chance.

Mr. **Kukla**. The question I want to know, and you brought it up, too, Senator Conrad, is why they are holding the files from us, for not letting us see the record? There is something in there they are trying to cover for. Can anybody on the panel give me an answer? I have had the run-around answer.

Mr. **Flemming**. I would like to restate what I tried to state earlier. Your example of your copy of the mortgage, that is a document that you have access to. You have access to the financial information that has been submitted in the file and the analysis.

I have been involved in some of the Credit Review Committee hearings that go on and we pull out projections of income and expenses to go through with the borrower to determine what the past earnings has been on the unit and what future projections are, and what it takes for family living, and what it takes for debt repayment and machinery replacement, to see whether the unit is going to work or not.

All of that should be available to be discussed with and have access to. And that is what I was trying to really allude to before when we answered that question.

Senator **Conrad**. All right. Let us give the next person a chance to ask a question, if we can do that.

Mr. **Kukla**. Well, I want to say one thing. There is lots of things that are not cleared up here in this Farm Credit Act or this Federal land bank that I think there is something going on that they do not want people to know. And I would like what advice—I have talked to you before that I would like to have this all checked out.

Senator **Conrad**. All right.

Mr. **Kukla**. Because they are covering their feet someplace along the line.

Senator **Conrad**. We will have another hearing in Washington and we will have the same questions. Next in line.

STATEMENT OF WILBERT D. WILKINSON, REPRESENTATIVE, FORT BERTHOLD INDIAN RESERVATION, GARRISON, ND

Mr. **Wilkinson**. Good afternoon, Senator Conrad, committee members. You know, the Agricultural Credit Act——

Senator **Conrad**. If you would give your name for the record.

Mr. **Wilkinson**. I got it. My name is Wilbert Dale Wilkinson. I am here on behalf of Ernest and Molly Wilkinson and the Fort Berthold Indian Reservation.

Senator **Conrad**. All right.

Mr. **Wilkinson**. There are certain things that need to be brought to your attention. One is the Agricultural Credit Act was supposed to facilitate keeping the farmer on the farm, rancher on the ranch.

One, we have some very serious problems on Fort Berthold. You know, the Credit Act did not in any way sanction or legalize fraud by any Federal agency.

What is important, Senator Conrad, is DALR$ report. You know, when your name goes upon a document and you believe that that document is being put in a DALR$ program and you find out later that you are denied all service because your form was altered by the legal agency—in fact, it was the two part application.

But the document was altered to the point where the loan funds, it was disproved, but the expenses were included in the operating plan which, what it did for the whole feasibility of the plan, it knocked it out. It showed the $8,000 for the leases, the additional costs for harvesting, but, you know, on the crop productions, all those were deleted.

Ernest and Molly Wilkinson are elderly Indian people. They are not really attuned to fighting the establishment. And I think their case deserves special interest by you.

Senator **Conrad**. All right. Let me just say this to you, we have very little time left here and we have a number of people that have questions that they want to ask.

I hear what you are saying. I will look into your case specifically. But if you have a question to ask of these gentlemen, please do that so that we can get on that and get these other people's questions answered as well.

Mr. **Wilkinson**. Let me ask three questions just so they are in the record, so that you are aware of it.

There was a letter sent to FmHA. What is the present—what do you mean by the present value of restructured loans is less than recovery? OK. FmHA responded, said the DALR$ is a computerized program that I do not have any idea on the formulas used.

The second one we asked the FmHA was their interpretation of the Agricultural Credit Act. Their response was, I have not seen the entire 1987 Credit Act in draft or completed form.

And then the last one was, as a DALR$ printout is complicated, would you please give us a layman's report or explanation of the documents? And their response was look at exhibit J.

Senator **Conrad**. Who gave you those, if I might inquire?

Mr. **Wilkinson**. That gentleman sitting there. And if it would be helpful, Senator Conrad, I will give you a packet. It is a very hostile packet. In fact, it ties into similar what these last two gentlemen said where, when you see the entire record, when a Federal official lies—I am telling this very critical.

It is like those gentlemen sitting down there withholding documents from their clients. But this gentlemen here, you know, commended FmHA on providing documents at 10 cents a copy. In those documents it showed where we lied to the State office and the loans were accelerated, and a statement in the documents that my mother and father had not made payments since 1984, which was a damn lie.

Senator **Conrad**. Wait a minute now. Slow down, slow down.

Mr. **Wilkinson**. Getting too emotional.

Senator **Conrad**. Just take a deep breath.

Unidentified Speaker. Senator Conrad, I had some other things to say.

Senator **Conrad**. Slow down. People are in line to ask their questions, and this gentleman is next and then we have two men who are seated in the aisle who are next.

So if you want to ask a question, get in line. We are going to do it with some discipline here. This gentleman over here on this aisle is next.

Unidentified Speaker. I just wanted to back up to this Indian for a minute.

Senator Conrad. Wait a minute. We are going to operate under order. This man is next.

STATEMENT OF DON ORWICK, FARMER, MICHIGAN, ND

Mr. Orwick. My name is Don Orwick. I am from Michigan, North Dakota.

Bruce Bohnsack, district manager, you stated in your testimony on the sale of acquired property that your policy is in compliance with the Farm Credit Act of 1987. When farm credit advertise lands for public bid, the Credit Act says that the former owner be notified by certified mail. It also states that if the former owner submits a bid equal to someone else's, that the former owner's bid shall be accepted. Are you aware of this?

Mr. Bohnsack. I think that is in concert with my testimony.

Mr. Orwick. Is this policy, is it being followed?

Mr. Bohnsack. As far as I know it is.

Mr. Orwick. In my case it was not followed. I had some property that was foreclosed on by the Federal land bank and it came up for public auction. And we put in a bid on it, and we had the high bid on it, and we still did not get the property back.

Senator Conrad. Is there somebody there that could address that question?

Mr. Olson. This property in question is in our service center territory. We have not sold any properties by a public auction method. We advertise our properties after offering them back to former owners at appraised value, with people being allowed to privately submit offers on the property. And then we accept the most attractive offer at that point. So we are in concert with the district policy.

Mr. Orwick. What do you mean you did not sell it public bid?

Mr. Olson. We do not sell by a public auction method. We offer the property through the newspapers and accept private offers through that method.

Mr. Orwick. Your offering in paper for bids is not public, then? It would appear to me, being it is in the paper, advertised publicly in the paper, it would appear to be public.

Mr. Olson. Our method is to simply call for people to give the people the opportunity to submit offers. We are not taking bids. We do not go through a bid taking and bid raising process.

Mr. Orwick. I guess I do not quite understand this. It would appear to me that if it is advertised in the paper that it is up for public bids. It is open to the public.

Mr. Flemming. May I comment, please?

Senator Conrad. Sure.

Mr. Flemming. Under the first right of refusal, if the property is offered back to the former owners at appraised value and it is not accepted, even if the former owner gives a bid of other than appraised value figure, the property is then sold to a third party after that and it is above the previous owner's bid back price, then it is appropriate to sell the property, whether it is auction or bid in the newspaper or just a private sale. And I am not sure of your circumstances, sir.

Mr. **Orwick**. I put in a bid. It was advertised in the newspaper for bids, submit bids by such and such a date, and which we did put in a bid. Some land that was foreclosed on by the Federal land bank. We put in a bid for it. We had the high best bid but yet we did not get the land back.

Senator **Conrad**. Let me say to you what we should do in a case like this is look into this case. They do not know the specifics of your case, but we should get the facts and have a chance to get it reviewed so that we can get you a solid answer to your question.

Mr. **Orwick**. I would certainly appreciate it.

Senator **Conrad**. Thank you. Next on this side. Yes.

STATEMENT OF SHAWN D. FREDERICKS, PRESIDENT, FORT BERTHOLD LAND AND LIVESTOCK ASSOCIATION, NEW TOWN, ND

Mr. **Fredericks**. My name is Shawn Fredericks. I am president of the Fort Berthold Land and Livestock Association. And I have farmed, ranched on Fort Berthold all my life.

Fort Berthold is an Indian reservation 100 miles to the northwest of us. I want to address just a short statement on Fort Berthold and then on my own personal. I understand you are going to be allowing 2 weeks to give additional material into the record.

Senator **Conrad**. That is correct.

Mr. **Fredericks**. So then I will come with a more detailed——

Senator **Conrad**. Go ahead.

Mr. **Fredericks**. As far as my own personal self is concerned, I guess as soon as I got into FmHA I was trying to get out. And I have been trying to do that for the last 8 or 9 years, I guess. And more recently, then, I have had the opportunity to, I felt, to exercise a buyout.

And I also, in the process of all this problem and maneuvering and canceling leases and so forth, I won a $225,000 claim from the Government. My actual losses were nearly $2 million over those period of years, but in order to get a claim I produced all my records. And all of them, out of those written records or receipts, I was able to get a little over half of that from the claim.

And so as far as I am concerned, if I was able to get a write-down and get out of this and get my land back, I would be pretty even-steven with the board. I would lose a little but I am estimating I would be even with the board.

I would be faced with, I guess, an IRS problem. So I guess I submitted a buyout request to the—to our County Supervisor and——

Senator **Conrad**. That is FmHA?

Mr. **Fredericks**. FmHA. Yes. And I never really heard anything from him.

Senator **Conrad**. When did you submit that?

Mr. **Fredericks**. I submitted that on—I had the meeting on December 15, submitted that on January 9.

Senator **Conrad**. You have not heard anything?

Mr. **Fredericks**. Just recently I received an acceleration notice, continuation of acceleration. So I guess what I would like to do, all I am asking is to be allowed to buy out FmHA at what is available to me through the Farm Credit program.

Senator **Conrad**. All right. If you would present that to us, we would be happy to pursue and find out why you have not received an answer.

Mr. **Fredericks**. Thank you. As far as the association is concerned, prior to our last meeting I asked the County Supervisor how many people applied for service under the Farm Credit program.

Of the 75 packets, 31 of those packets were delivered on time or were delivered to his office. And out of the 31, 16 were disqualified for some reason or another. So he is looking at 15—15 of those original 75, out of 85 operators on Fort Berthold.

And I just want to say that I think the problem, with looking at myself and other people that I deal with out there, is you get kind of burned out after a while. You just get to the point where you really do not care.

I suppose during this process, if I did not have one of my sons become a lawyer during this time, another one worked for FmHA in the western part of Montana, so I got some help, but as far as me doing it, I do not think I would have lasted. I would not be here today. They helped me so I am able to be here and to tell you about it.

And I think that there is a lot of other people out there, not only on the reservation, you know, that—we are just—our people are not educated that well. And I am sure other people are in the same category and they just do not feel—they just give up. They do not turn in the applications and they just want to get out and forget it, just go on with their lives.

[The prepared statement of Shaw D. Fredericks appears at the conclusion of the hearing.]

Senator **Conrad**. Thank you. And on this side.

STATEMENT OF MERLE KALENZE, BERTHOLD, ND

Mrs. **Kalenze**. Senator Conrad, thank you for coming. You read my letters. I am Mrs. LeRoy Kalenze of Berthold. I have a couple of short questions.

I want to know if Farm Credit Services is carrying out the first right refusal and exactly what is the right refusal. My opinion was they sent you out your packet, and our district, with Mr. Lyle McLain, knows they sent out the 30 days and required the appraised value and 5 percent down.

We did not argue with the price but we were a little reluctant with the 5 percent down. In case they did not get bids on the land, we thought we could lease it and make an offer. We also said, if you have any offers on this land, contact us and we will put our 5 percent down or match the offer.

This went on for a while. We have not heard from them. The land comes in the paper for sale, which I would consider a public offering. We were not notified of that.

We went down to Farm Credit and told them we will put our 5 percent down and buy this particular parcel of land back. The loan officer said: You cannot. It is sold.

We said: We told you we will equal the offer. As we read the Farm Credit Act, we have the right to equal the last bid. He said: No, you cannot. That was sold.

So we did put 5 percent down on some other land and we were going to put on the rest and he said, no, we got 5 percent from someone else. So they would not take our money. So we argued a little bit and we had a meeting. It was a very good meeting, I thought. We went home.

We had the understanding with the board, the executive board, that with this one parcel of land we only had 5 percent down the deal would not close. They would take our money. We got a letter in the mail today, the other guy has 5 percent on it. It is sold.

What is the first right of refusal or last right of the refusal? Is Farm Credit, the northwest district, offering its own terms, making its own laws? I do not see anything in the Farm Credit Act where you have to put 5 percent down.

Mr. McLain. I guess I will answer that to the best of my knowledge. I guess I was not aware of the letter that you claim you received because I have been down here for the last couple days.

It does not state, to my understanding, in the Farm Credit Act that 5 percent down is required. However, in other places in the act it states that all borrowers shall be treated equal and, therefore, we do require 5 percent down on any bid of acquired property, including the people who presently own the property.

And this is a district policy. It is enforced by FCA, I believe. Is that not true?

Senator Conrad. But this sure does not sound like right of first refusal. How can it be that these people have land sold out that, this was your land, without them having——

Mr. McLain. My knowledge, and I have the man sitting here that could probably answer it better, Harlan Vooge, but the right of first refusal was given the Kalenzes the same as it was given everybody else, from what we found out or looked at.

Mrs. Kalenze. Maybe all of us in that district did not get our right.

Mr. McLain. I think the right of first refusal is a 30-day time period and, Harlan, you want to explain that a little further as to how that operates?

Senator Conrad. Let me indicate that we are very well past the time that we had intended to conclude this hearing. I have to go on a plane to Fargo, and that plane was supposed to leave 30 minutes ago.

I do want to give—we have two more people waiting, and they have waited patiently, and I want to make sure I give them a chance. But we have to move very quickly now.

Now, if you do not mind, I would like to pursue your case. I think it will be difficult for us to pursue an individual case here, unless you can give a quick response.

TESTIMONY OF HARLAN VOOGE, VICE PRESIDENT, FARM CREDIT OF MINOT

Mr. Vooge. My name is Harlan Vooge and I am vice-president with Farm Credit of Minot.

I am very familiar with the case and have looked at the file, and I agree with Senator Conrad that we would be very open and would like to go over this particular situation with the member. It is very detailed, and I think the major confusion comes in what is a public sale and what is a private sale.

And we would like to handle this with the Kalenzes and you, Senator Conrad, in detail.

Senator CONRAD. All right.

Mrs. KALENZE. OK. Can we be looking at a date to meet with you again? We are getting awfully good at these meetings. We had about 8 years of them.

Mr. VOOGE. My understanding is about a week ago Friday you got in with your chief executive officer and three members of our board. And if there still needs some clarification on the first right of refusal, we would be more than happy to meet with you and go over those facts.

Mrs. KALENZE. We had a letter today and it was completely different than what we had Friday.

Mr. VOOGE. Very good. We will get together and discuss this case.

[The prepared material of Mrs. LeRoy (Merle) Kalenze appears at the conclusion of the hearing.]

Senator CONRAD. I am going to just allow these last two people. And if you please, be brief and let us, if it is a question, if it is a comment, get to the question or the comment.

STATEMENT OF DWIGHT KIEFERT, FARMER, VALLEY CITY, ND

Mr. KIEFERT. My name is Dwight Kiefert, a farmer. Correct me if I am wrong, Farm Credit claimed there are 7 percent of the farmers that are delinquent, we understand you would like to deal with them or foreclose on them.

Mr. FLEMMING. That was 7 percent of the loans that are restructured in North Dakota, that are already restructured and not paying.

Mr. KIEFERT. OK. What I was getting at is my loan, was delinquent in the beginning of the year, and I was able to revise it and make a $100 payment to become current. I appreciate this.

But if this is done widespread, that is going to have an effect on what you are saying to the Senator's office about how many farmers are in trouble. Because I know for a fact more people are in trouble.

Senator CONRAD. Believe me, I know that. At least 25 percent or 30 percent of our farmers are in trouble.

Mr. KIEFERT. I am saying if everybody could do what I did, nobody would be delinquent.

Senator CONRAD. Thank you very much. Anabelle.

STATEMENT OF ANABELLE BOURGOIS, BALDWIN, ND

Ms. BOURGOIS. Yes. I did not mean to be out of line. I wanted to speak on behalf of this person from Fort Berthold.

Senator CONRAD. I am sorry if I was abrupt with you, but I am trying to maintain order here so that people who were waiting in the line——

Ms. BOURGOIS. I understood, but I do apologize for that. But this person from Fort Berthold, I went up and I spoke to him for a brief moment afterward and I said I wish you would have told them about the whole situation in Fort Berthold that I think you should check into.

We have—the "Food for Peace" have brought back two civil rights leaders and they had a press tour on the western part of North Dakota. They were on Fort Berthold and they were shocked to know how the food is being cut back on the reservation by the USDA. And the diabetes, because of the poor diet, is a very serious situation there.

And it is not just these two farms that are in trouble. There are a lot of other farms in trouble there. And I think we owe it to them, with the land and that was taken away from them, and funds put in a State fund, which they actually did not get back funds for any reservation development, which it should have been. It was set up more like a welfare program, which is insane.

And I do want to quote from Sarah Vogel, what she said about the restructure or the process. It is in the March 31 North Dakota Farmers Union paper when she said the process of the restructuring, it is like the snake swallowing a rabbit, a group of FmHA moving down the pipeline.

So the situation is we have people starving all over the world. We need the farmers on the land. We do not need any foreclosures. Thank you.

Senator CONRAD. Thank you. All right. Let me now indicate that we have got to close this hearing down. The record will be kept open for 2 weeks. There will be additional questions admitted to the record.

I want to thank, first of all, all of the witnesses this afternoon. This is not always easy but I think it is very important that we do it. I think this has been a very constructive day, and I want to thank all of you in the audience for attending and participating. I appreciate it very much. Thank you.

[Whereupon, at 4:52 p.m., the subcommittee recessed, to reconvene at 9:34 a.m., Tuesday, May 9, 1989, in room SR-332, Russell Senate Office Building.]

[Material submitted for the inclusion in the record follows:]

APPENDIX

[Prehearing questions submitted by Senators Leahy, Conrad, Boren, Daschle, Harkin, and Kerrey prior to April 26, 1989 hearing and the responses follow:]

MARCH 13, 1989.

Mr. NEAL SOX JOHNSON,
Acting Administrator, Farmers Home Administration, U.S. Department of Agriculture, South Building, Room 5014, 12th Street and Independence Avenue, SW., Washington, DC.

DEAR MR. JOHNSON: We would appreciate a description of the Farmers Home Administration's actions to correct the problems raised at the January 24, 1989 hearing of the Subcommittee on Agricultural Credit with regard to restructuring farm borrowers under the Agricultural Credit Act of 1987. Many of these problems were also raised at the Senate Agriculture Committee's field hearing in Sioux City, Iowa on February 13, 1989. We are also taking this opportunity to raise several related issues.

1. In your testimony, you stated that the 3,201 borrowers who requested restructuring within the deadline but did not complete the minimal requirements for FmHA's "rule of reason" would not be offered the complete loan servicing package, but only the leaseback/buyback or homestead protection program. In light of congressional concern that these borrowers should not be rejected, have you determined that these borrowers will now be offered the complete loan servicing package? If not, please provide us with the written interpretation by your General Counsel of sec. 331D(e) of the act as to the minimum notification required of a borrower to be eligible for restructuring.

2. How many active delinquent borrowers did not respond in any way to the loan servicing notices? How many borrowers were rejected because of incomplete or late applications? Please provide us with the formal instructions you have provided to County Supervisors to determine borrower eligibility for the loan restructuring process.

3. In your letter of February 16, 1989, to Senator Boren, you stated that County Supervisors were instructed to contact borrowers within 5 days of receipt of incomplete applications, and request complete information. How much time are borrowers given to provide this information?

4. Do the final rules on the Agricultural Credit Act of 1987 state that the 60-day period in which FmHA is required to respond to borrowers' applications commences when the application is complete, or when the restructuring request is received? In other words, are your County Supervisors, under the pressure of the 60-day deadline for responding to borrowers' restructuring applications, making decisions without full documentation?

5. Since the hearing, have FmHA staff met with the Agricultural and Rural Affairs Committee of the National Association of Attorney Generals to share suggestions about how the restructuring applications and procedures can be simplified and improved?

6. In your loan servicing notices mailed subsequent to the November 1988 mailing to delinquent borrowers, will you specifically indicate in the loan servicing notice package which forms FmHA requires to be submitted at a minimum to qualify for restructuring consideration? What will that minimum requirement be?

7. Will FmHA have adequate staff to complete the restructuring applications within the 60-day time period mandated by law, while at the same time processing the annual borrower applications for operating loans for spring planting? If staffing is inadequate, do you anticipate the need for a time extension for processing the

applications in order to ensure that FmHA employees are able to provide the personal consideration and counseling that is necessary for each application, or do you intend to employ additional personnel?

8. Will borrowers who are being considered for restructuring or are in the process of mediation or appeal of a denial for restructuring, be eligible for FmHA operating loans for this coming crop-year?

9. Do farmers have the opportunity to test their application on the DALR$ program prior to submission to the FmHA office?

10. Are County Supervisors instructed to use the DALR$ analysis as an aid to determining restructuring eligibility, rather than using it as the sole deciding factor?

11. In cases where a borrower is considered ineligible for restructuring, does the State Director personally determine denial of the borrower's application?

12. Are borrowers provided with specific reasons why their plan did not meet the DALR$ criteria, and specific areas of deficiency in their Farm and Home Plan before FmHA takes any action to deny their applications?

13. Will you require that County Supervisors personally meet with borrowers who have received denial notices to discuss the denial prior to mediation, attempt to negotiate a settlement, and if they cannot settle, to then discuss mediation?

14. It is our understanding that slight adjustments in a borrower's Farm and Home Plan which initially fails to meet the DALR$ criteria can make the plan acceptable. However, without a detailed description of the DALR$ analysis, borrowers are not able to determine what changes may be made. Do borrowers who are denied restructuring receive a detailed letter describing the reasons for denial, rather than simply a printout of the DALR$ calculation?

15. If county FmHA offices plan to appraise borrowers' property, are the borrowers notified of the time of the appraisal?

16. Under the mediation process, will borrowers have the same rights to information as under the national appeals process, including specific reasons why their application did not meet the DALR$ criteria and a copy of the DALR$ analysis?

17. Will borrowers who are denied restructuring and cannot develop a feasible plan during mediation be notified of the national appeals process?

18. Will each borrower who requests an appeal of an FmHA decision under the act be guaranteed the opportunity to meet in person with an independent hearing officer under the national appeals division provisions?

19. What interpretation has the Office of the General Counsel made with regard to a borrower's private right of action under the Agricultural Credit Act?

20. It is our understanding that some borrowers who have conveyed their farms and/or other property back to FmHA prior to the implementation of the Agricultural Credit Act of 1987 have received notice of loan servicing packages mailed to delinquent borrowers in November. Will FmHA settle the debts of borrowers who conveyed their property to FmHA under the regulations existing at the time of the conveyance, which was prior to the implementation of the 1987 act, rather than requiring that these borrowers apply for restructuring?

21. Have you developed a formal agreement with the Farm Credit System (FCS) in which it agrees not to sell FCS inventoried land to other buyers while FmHA is processing an application for the purchase of that land by an FmHA borrower under section 613(c) of the Agricultural Credit Act of 1987, referred to as the FmHA demonstration project?

22. Have your estimates of the number of borrowers who will qualify for restructuring and the number who will not qualify under the Agricultural Credit Act changed since the publication of your Preliminary Regulatory Impact Analysis on September 14, 1988?

We appreciate the difficulties that your agency faces during this time of administration transition and increased workload due to the Agricultural Credit Act. However, as you know, these issues are very time sensitive because the time period in which FmHA must respond to borrowers' restructuring applications is nearly at an end. Therefore, we ask that you provide brief and concise responses to our questions no later than April 7. Thank you for your prompt action.

Sincerely,

Kent Conrad.
Patrick J. Leahy.
David L. Boren.
Thomas A. Daschle.
Tom Harkin.
J. Robert Kerrey.

U.S. Department of Agriculture,
Farmers Home Administration,
Washington, DC, April 10, 1989.

Honorable Kent Conrad,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Dear Senator Conrad: This is in response to your letter of March 13, 1989, concerning the restructuring of delinquent farm loans by the Farmers Home Administration (FmHA). We are responding to your questions in order.

1. FmHA is unable to offer primary loan servicing benefits to those delinquent borrowers who fail to meet response requirements under the "rule of reason" policy. Although this policy permits them to provide the information at any time during FmHA's 60-day processing period, failure to furnish the data needed to analyze their situations causes the borrower to lose the opportunity to be considered for debt write-down. Those borrowers who submitted such applications have the right to appeal the Agency's refusal to accept then as complete, and each will be considered on a case-by-case basis.

As you requested, we are enclosing copies of our Office of the General Counsel opinion on minimum borrower response requirements and the Unnumbered Letter dated January 6, 1989, which instructed field personnel on eligibility requirements.[1]

2. It is too early in the process to know exactly how many borrowers failed to respond in any way. Our latest figures show that 31,296 borrowers who were mailed the initial packet failed to apply for loan servicing. However, some of these individuals responded by paying their accounts current or applying for debt settlement, in accordance with FmHA regulations. Some are under bankruptcy protection, and many are no longer farming.

Additionally, those certified-mail packets which were returned as undeliverable have been mailed again, via first-class mail, and the borrower's 45-day response period is considered to have started 3 days after the mailing.

3-4. Borrowers who responded with applications which met the minimum rule of reason requirements were permitted to submit the remainder of their documentation at any time during FmHA's 60-day processing period. Applications which are not complete by the end of this period will not be considered for primary loan servicing. The 60-day period begins on receipt of an application that meets minimum rule of reason standards.

As a practical matter, the Agency cannot perform the calculations necessary to determine eligibility for benefits until a completed application, containing all necessary information, is received. Those applicants who waited until the end of the 60-day processing period to deliver needed information may not receive a response within this timeframe.

5. While no meeting with the National Association of Attorneys General has been scheduled, FmHA would be pleased to meet with that organization, as we have with other groups, to receive suggestions on improving our program.

6. The concept of the rule of reason policy with regard to borrower responses will be incorporated in the final regulations to implement the act. All notices mailed after publication of the final rules will advise borrowers of the specific materials they must submit to be considered for servicing.

The complete 1951-S regulations will not be included in future packets. Borrowers will be advised that these regulations are available at their FmHA county office and that copies will be provided on request. This will reduce the packet to a minimum number of forms, plus instructions.

7. FmHA has made maximum use of its personnel, temporary positions and overtime, as well as contractors, in an effort to meet the 60-day deadline for each application. In most cases, those borrowers whose applications have not been processed within the timeframe are those who were late in providing all the information needed to make the calculations.

As of March 10, 1989, the Agency had processed more than 81 percent of the applications, nationwide, and the 60-day period had not expired on all the unprocessed applications. Nineteen States reported completion rates above 90 percent at that time, and this work is continuing. We expect that every completed application for loan servicing, as well as those for operating loans, will be processed in time for spring planting.

8. Distressed Farmer Loans will be provided for these borrowers. Additionally, consideration will be given to releases of collateral for essential living and operating expenses.

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[1] See pages 263 to 264 for the referred to material.

9. The DALR$ software program is available from the Agency for the cost of reproduction. Several farm advocacy groups have requested and received the program to assist borrowers in this manner. FmHA offices are unable to provide this service in advance of formal application because of time and personnel constraints, as noted in (7). However, borrowers may request to be present to discuss the application when it is being considered by the County Supervisor.

10. DALR$ was never intended to be the final determiner of eligibility for restructuring. It provides a consistent nationwide approach and serves only as a calculator, performing detailed and intricate computations involving a number of variables. Data entered for each case are unique to the particular borrower, permitting the calculations to be tailored to the individual situation.

11. While rescheduling, reamortizing and other methods of debt restructuring can he approved at the county office level, the State Director must approve all actions involving the writing off of debt, including buyback at net recovery value. During the FmHA appeals process, borrowers have the opportunity to request that the State Director review adverse decisions.

12–14. Borrowers who are not able to qualify for debt restructuring are advised in writing of the reasons for the decision. Further, they have the right to request a meeting with the County Supervisor to discuss their applications in detail. If justifiable changes can be made in the Farm Plan to improve repayment ability, the Supervisor has the authority to reconsider the application.

Borrowers whose plans cannot show repayment ability are also notified of their right to appeal the Agency's decision to the FmHA National Appeals Staff.

Figures provided by the borrower are assumed to be correct and based on historical data. Any deliberate falsification or manipulation of the data without regard to truth, for the sole purpose of qualifying for debt write-down, is not permitted.

15. Borrowers should be notified in advance before appraisers, whether FmHA personnel or contractors, make their inspections. Any borrowers who have not been so notified may contact their FmHA State Office to register a complaint.

16. Under the Freedom of Information Act, all borrowers have access to their files for any purpose. Information on the failure of their applications to qualify for debt restructuring will have been provided to them well before mediation begins, as noted in (12–14).

17–18. All adverse decisions by FmHA are appealable, and applicants are advised of their appeal rights at the time the decision is conveyed to them. Each appellant has a right to an individual hearing before an officer of the FmHA National Appeals Staff, and normal appeals procedures will be followed in each case.

19. The Agricultural Credit Act of 1987 places no restrictions on a borrowers' right of action where FmHA is concerned.

20. Borrowers whose conveyance of their farms to FmHA before January 6, 1988, failed to satisfy their entire debt may settle with the Agency in accordance with current regulations regarding debt settlement.

21. There is no provision in the Agricultural Credit Act of 1987 that requires the Farm Credit System (FCS) to hold all inventory property for sale only to FmHA applicants, and neither does our agreement with FCS contain such a restriction. There is no prohibition against a potential borrower entering into a sales contract on an FCS farm, subject to determination of eligibility, suitability of the land and credit approval by FmHA. For the duration of such a contract, the property cannot be sold while the loan is being processed.

22. FmHA is still in the restructuring process, and it is too early to make a more accurate estimate of the number of borrowers who will ultimately qualify for restructuring.

We hope that this information will be helpful to you in understanding the Agency's position on these issues. If you have further questions, please contact us.

Sincerely,

NEAL SOX JOHNSON,
Acting Administrator.

Enclosures.

FEBRUARY 2, 1989.

MEMORANDUM FOR PETER C. MYERS, ACTING SECRETARY

From: Christopher Hicks, General Counsel.
Subject: Agricultural Credit Act Loan Restructuring Applications.

Because of congressional inquiries, you have asked that we review our advice to the effect that FmHA must have received a completed application from a farmer-borrower for restructuring within 45 days of the farmer-borrower's receipt of notice, and that FmHA cannot consider an incomplete application, i.e., one without the supporting information from the farmer, as a "written request" satisfying the requirements of the Agricultural Credit Act of 1987.

We have reviewed this question, and our opinion continues to be that the statute requires a complete application, within 45 days, if a borrower wishes to be considered for restructuring. The reasons for our views are as follows:

The Agricultural Credit Act sets out specific instructions for the administration of its mandated "loan service" (restructuring) programs. In § 605 of the act, Congress required that the notice be provided by certified mail to all borrowers who are 180 days delinquent. The notice is required to contain a summary of all primary loan service programs, including the new restructuring; it should "provide any relevant forms, including applicable response forms" for applying for restructuring; it should "include a summary of the manner in which the borrower may apply and be considered for all such programs," and it should "advise the borrower of all filing requirements." This language alone suggests that Congress envisioned and intended the application not be a mere request, without supporting information.

The 45-day time period after notice in which the borrower must file his application was also determined by Congress. Section 605 concludes by providing that: "The Secretary shall consider a farmer program borrower for all loan service programs if, within 45 days after receipt of the notice required in this section, the borrower requests such consideration in writing. In considering a borrower for loan service programs, the Secretary shall place the highest priority on the preservation of the borrower's farming operations."

In addition, in § 615 of the act, which sets out the details of the restructuring, Congress provided, in subsection (b), that, "to be eligible to obtain assistance under subsection (a)" (i.e., to be considered for restructuring) "the borrower must present a preliminary plan to the Secretary that contains reasonable assumptions that demonstrate that the borrower will be able to—(A) meet the necessary family living and farm operating expenses; and (B) service all debts, including those of the loans restructured;".

Finally, in subsection (c)(4) of § 615, quoted from above, the act provides that "within 60 days after receipt of a written request for restructuring from the borrower, the Secretary shall—(A) make the calculations specified in paragraphs (2) and (3); (B) notify the borrower in writing of the results of the calculations specified in paragraphs (2) and (3); and (C) provide documentation for the calculations."

Our view is that this statutory language, read together, sets out a coherent system of administration in which (a) FmHA must give the borrowers notice of the programs, (b) the notice must give borrowers all the information and forms they need to apply, (c) borrowers must apply within 45 days of receiving notice, and (d) the agency must, within 60 days of receiving the application, make the calculations, and the decisions based on those calculations, and communicate the result to the borrowers.

The suggestion that the language requiring a borrower to "request consideration for loan servicing in writing" within 45 days is satisfied by a bare request, without the supporting information referred to in the other statutory provisions set out above, ignores both the references to the materials the Secretary is required to give the borrower with the notice, and also ignores the duty of the Secretary to arrive at a decision on "the written request" within 60 days after having received it. The general rule that statutory language must be construed so as to make sense of the entire statute supports only this construction. If the "written request" were to mean only a bare demand for restructuring, the Secretary would, after 60 days had elapsed, be entirely unable to make the required decision granting or denying the request.

We also note that the notice to the borrowers—which notice sets out the details of how restructuring is to be administered—is required by § 605 itself to be a part of FmHA's regulations. Even if another interpretation of the act were acceptable, adopting it would thus require completing the process of changing FmHA's regulations.

U.S. Department of Agriculture,
Farmers Home Administration,
Washington, DC, January 6, 1989.

Subject: Good Faith Efforts for Submitting Application Requesting Farmer Programs Primary and Preservation Servicing Options.
To: State Directors.
Attention: Farmer Programs Chiefs.

This will confirm the directions given to you via tele conference on December 21, 1988, for handling applications for loan servicing.

Borrowers will be considered to have made a "GOOD FAITH" effort, if they complete and submit the following forms and attachments within 45 days of receiving exhibit A of FmHA Instruction 1951-S, "Notice of the Availability of Loan Service Programs for Delinquent Borrowers," or attachment 3, to exhibit A of FmHA Instruction 1951-S, "Notice to Borrowers with Non-Monetary Defaults, Non-Monetary Defaults and Delinquency, or that a Prior Lienholder or Junior Lienholder is Foreclosing":

1. Form FmHA 410-1, "Application for FmHA Services."
2. Form FmHA 431-2, "Farm and Home Plan."

NOTE: The Balance Sheet needs to be completed on one form, either Form FmHA 410-1 or Form FmHA 431-2.

To assist the borrower in submitting a realistic Farm and Home Plan, the County Supervisor should provide the borrowers with a current copy of the established unit prices for agricultural commodities produced in the State.

3. Attachment 2, "Acknowledgement of Notice of Program Availability," or attachment 4, "Response to Notice Informing Me of FmHA's Intent to Accelerate My Loan."
4. A map of the farm, with the proposed easement land delineated, will be necessary when the borrower requests debt restructuring through the Conservation Easement program.

Borrowers must submit all other attachments which are needed to verify information submitted on Form 410-1, "Application for FmHA Services," and Form 431-2, Farm and Home Plan"; before any Primary and Preservation loan servicing request can be granted. While these attachments need not be provided by the borrower within the 45-day period, they must be filed as soon as possible after that date. This information will include the following:

1. Form FmHA 440-32, "Request for Statement of Debts and Collateral." This form is used to verify all borrower's debt including that held by unsecured creditors. Borrowers can get this form(s) completed in most cases.
2. If the borrowers or their spouse have any off farm employment, Form FmHA 1910-5, "Request for Verification of Employment," must be submitted. Borrowers are responsible for getting this form completed by their employer and taking it to their county office. If more than one spouse is working at off farm jobs, a Form FmHA 1910-5 will have to be submitted for each spouse.
3. SCS-CPA-26 and AD-1026, "Highly Erodible Land and Wetland Conservation Certification." The information provided by these forms is necessary to determine what cost, if any, need to be included in the Farm and Home Plan to pay for the development of conservation plans.
4. Form FmHA 1924-1, "Development Plan." This form is needed if the borrowers plan to make any major development, i.e., new buildings or, most important, begin implementation of Conservations plans necessary to be in compliance with Sodbuster and Swampbuster requirements which must be implemented by December 31, 1989.
5. Form FmHA 410-9, "Statement Required by the Privacy Act."
6. Five year Production history as outlined in FmHA procedure section 1924.57(d)(1) of FmHA Instruction 1924-B.

Neal Sox Johnson,
Acting Administrator.

Sent via telemail on January 6, 1989, at 4:06 p.m. by ASD. State Directors will immediately distribute as indicated.

PREPARED STATEMENT OF ALAN BERGMAN, PRESIDENT, NORTH DAKOTA FARMERS UNION, JAMESTOWN, ND

My name is Alan Bergman. I operate a small grains farm near Jud, North Dakota and serve as the president of the North Dakota Farmers Union, which is a general farm organization, representing over 31,000 families in our State. With me today is Karl Limvere of Ypsilanti, North Dakota who serves as the Assistant State Secretary of our organization and has been the staff member who has worked consistently with farm credit issues.

First, we would like to welcome the Agricultural Credit Subcommittee to our State. Senator Kent Conrad had a key role in securing many of the provisions of the Agricultural Credit Act of 1987 which were of importance to North Dakota producers. We are pleased that he has continued his interest in this issue and that he has become the chairman of this subcommittee.

The Agricultural Credit Act of 1987 was an essential and timely law which sought to correct and to make the necessary adjustments so that the Nation's lender of last resort, the Farmers Home Administration, and the Nation's cooperative agricultural credit structure, the Farm Credit System, could carry out their mandates and responsibilities.

Prior to the law, the Farmers Home Administration was tied up in a straitjacket of its own making. The refusal of FmHA's top administrators to carry out the intent of Congress in borrower rights, loan restructuring, farm preservation and numerous other areas, had invited a series of successful lawsuits against the agency. Despite the lawsuits, FmHA's leadership in Washington, DC continued to stonewall judicial determinations and the critical needs of its borrowers for relief.

Although FmHA had ample opportunity to develop appropriate regulations to fully comply with judicial directives and similarly could have accommodated congressional oversight recommendations, it continued down its tunnel vision path using the regulatory process and administrative notices to obstruct those directives.

The Farmers Home Administration had become an agency that was administratively at cross-purposes with its historic congressionally mandated objectives. In this process, FmHA's leadership had created an administrative nightmare for its State and county offices and its borrowers. As a result of this self-imposed conflict, many of its operations and programs, including debt restructuring and collection, came to a total standstill.

It is useful to remind ourselves of these circumstances which led to the enactment of the Agricultural Credit Act of 1987. We need to recognize and understand that most of what was mandated within this law could have been carried out without further congressional authority by the Secretary of Agriculture and the FmHA Administrator if they had chosen to follow the path of congressional intent. Instead, they had attempted to place their philosophical brand on FmHA in an effort to phase out its programs. In other words, Congress had to reaffirm its historic intent and then mandate the administration to carry out that intent.

We believe the Agricultural Credit Act of 1987, to a great extent, is fulfilling the purposes for which it was enacted. It appears that FmHA's leadership has now accepted congressional intent in dealing with existing borrowers. We have to say "appears" at this point, because a large portion of the backlog of delinquent borrowers is still within the restructuring-mediation process.

We believe the success of the implementation of the Agricultural Credit Act of 1987 in this State can be primarily attributed to two factors.

First, we have to commend the dedication of the officials and employees in most of our county FmHA offices. Most of them believe in the programs, want to make them work and are willing to give their best efforts to working with their family farm borrowers.

Second, we have to commend the North Dakota Department of Agriculture's Farm Credit Counseling division, which provides both counseling and mediation services to producers in our State. The State legislature recently renamed the program to be the "North Dakota Agricultural Mediation Service." These counseling and mediation services have given producers in our State an avenue through which they can receive solid information, guidance and direction, as well as a meaningful opportunity to resolve their individual situation.

Between the work of these credit counselors, the county FmHA officials and employees, and the dictates of the 1987 Agricultural Credit Act, we believe there is finally some light at the end of the tunnel.

We do have a few special concerns. First, if the Agricultural Credit Act is to be successful, there must be adequate funding for the State mediation programs. As you are aware, North Dakota has just completed its legislative session, which has adopted an extremely tight budget for the coming biennium. State resources are extremely thin. It is absolutely essential that Federal funding carry the bulk of the costs of State mediation programs.

Second, we are still concerned about the release of income for living and operating expenses for those persons with accelerated loans. The $18,000 cap is unrealistic in relationship to farm operating expenses.

It still serves to starve out producers. While we are hoping that the new regulations, servicing and restructuring programs, will eliminate the long drawn-out situations we have experienced in the past, we believe that Congress needs to again look at the question. We are fearful that the cap, in fact, may continue to prevent FmHA borrowers from being able to exercise the rights to which they are entitled. This is one area that needs continued monitoring.

Third, we are concerned with the problems of producers who are in the process of loan servicing, restructuring and mediation or have been unable to meet USDA deadlines. This not only includes our concern of whether the "rule of reason" policy was adequately followed in the initial 45-day response period, but also to other USDA deadlines which may affect these borrowers. For example, the farm program signup deadline caught a number of producers in the process of one of the FmHA servicing options, but who did not know the outcome of that option and whether or not they would be able to farm a particular piece of land.

It should be noted in this concern for deadlines that we hope FmHA and other agencies are as understanding about these deadlines in the circumstances, as Congress has been about the deadlines established for FmHA within the Agricultural Credit Act.

Simply put, a producer who has been unable to meet USDA deadlines because of being in the midst of FmHA loan servicing options should not be penalized for failure to meet such deadlines.

Fourth, we request that this subcommittee and Congress continue to monitor the implementation of this law, especially as it applies to FmHA. We are in the midst of trying to work out one of the largest backlogs in the history of FmHA in a very short period of time. We really won't know how successful this legislation is until this large initial group is completely processed through the system.

While we are optimistic that the legislation is working as it was intended and that this should continue to be the case, we feel it would be worthwhile to have an independent review conducted by the General Accounting Office or similar entity, when this backlog has been fully processed.

Fifth, we request that this subcommittee help clarify how FmHA will be carrying out its loan servicing options in the future. We keep hearing rumors that FmHA plans to have another round of delinquency notices sometime in June. It would be useful for borrowers, farm counseling and mediation services, and for general farm organizations to know how delinquencies will be handled in the future. We want to be able to again help direct these borrowers to sources of information and services as may be appropriate.

We have to admit that we do not yet have a good handle as to how this past year's drought has affected FmHA borrowers, and their status in terms of being delinquent or current in payments. The next round of notices may give us a more accurate picture as to what has happened to FmHA borrowers as a result of the drought situation last year.

Another issue that needs to be reviewed by this subcommittee, both in terms of the current implementation of the 1987 law and in terms of the future of FmHA in assisting new farmers into agriculture, is the entire issue of the Executive order which makes FmHA lands available to the U.S. Fish and Wildlife Service for various easements.

Our most immediate concern in this regard is the issue of those producers who under the 1987 law regained some rights as prior owners. We believe that in these instances, unless the prior owner is a willing participant, has debt forgiven for providing these conservation easements, and agrees to the conservation easements, that any agreement reached on that property between FmHA and the U.S. Fish and Wildlife Service should be null and void.

We find it to be a disturbing irony that USDA consistently refused to implement or utilize the conservation easement restructuring authority previously enacted by Congress as a tool for debt reduction for producers, but yet now is willing to give that easement away, in some instances, taking it from underneath the prior owner, on the technicality that the land became part of FmHA inventory.

We also find it disturbing that this Executive order, which is now being used, stood quietly in the wings for some 10 years before it was given serious attention for implementation and its implementation has come in the midst of difficult times for agriculture and agricultural communities. This is a policy issue that must be reviewed by Congress.

Therefore, we believe Congress should call a temporary halt in the implementation of this order, until its impacts can be fully reviewed. Among the impacts that need to be considered are how this Executive order is affecting the viability of farm units within FmHA inventory lands, how it will affect the farming community and how it will affect the opportunities that could be available for beginning farmers on this inventory land.

The Agricultural Credit Act of 1987 sought to preserve as many farm units as possible with the least expense to the Federal Government and to the farm credit structures of the Government. In addition to monitoring the success and compliance of the law, Congress needs to begin taking a look at the next step.

The next step is how do we provide meaningful opportunities for future generations of producers and rebuild a base for family farm agriculture as part of the needed economic development of rural America?

The Agricultural Credit Act of 1987, by establishing a priority system for access to FmHA inventory land, demonstrates that Congress is concerned with rebuilding a system of family farm agriculture. The limitations and restrictions reestablishing the family-farm criteria as an essential eligibility requirement for FmHA programs further underscores this direction.

We want some further assurance that FmHA inventory land will only be available to family farm operators. It is our understanding that after the previous owner and the family of that previous owner, the next priority is provided to a previous operator of that land. It is also our understanding that the regulations require that this previous operator must not have a larger-than-family-farm unit upon acquisition of the inventory land.

We are, however, concerned that the family farm requirement is not getting the needed attention. In a number of cases, larger-than-family-farm operators were successful in bidding for the lease of FmHA inventory land. We are fearful that as the previous operator, they may be given a priority status to which they are not entitled. We would request this subcommittee, in working with USDA officials, to request full implementation of the family-farm requirement of previous operators to receive a priority right.

We believe that the inventory land within FmHA provides a tremendous opportunity for rural development through new family farm units. We also believe that the pilot program allowing FmHA eligible producers to get 5-year interest rate reductions on loans for purchase of Farm Credit System inventory land needs greater attention. Frankly, we are disappointed that the Farm Credit System has not made more aggressive use of this pilot program to assist new and restarting farmers.

As part of moving to the next step of rebuilding rural America's family farms and rural communities, we would request this subcommittee to review the future directions of FmHA. Frankly, we believe we are moving in the wrong direction as a nation in regards to FmHA.

In the past number of years there has been a congressionally approved policy of shifting away from direct farm ownership and operating loans and toward guaranteed loan programs within FmHA. If we continue to shift funds in this direction, we will be phasing out FmHA's most meaningful and productive programs.

Part of this shift comes from mistaken notions about FmHA losses. As pointed out in a message to Farmers Union members earlier this year (February 17, 1989 North Dakota Union Farmer article attached), direct farm ownership loans, which are more than 3 years delinquent, constituted only 6 percent of the dollar volume of delinquencies in FmHA. Similarly, direct operating loans made up only 11 percent of that dollar volume.

In sharp contrast, 83 percent of the dollar volume of loan delinquencies that are more than 3 years old are in the emergency loan programs. These programs were not targeted nor disciplined. When the General Accounting Office measured the losses over a 12-year period, the emergency loans made up over two-thirds of the total farm program losses experienced by FmHA.

We are concerned that too many people are willing to throw the baby out with the bathwater. If rural development is to have a chance, we need more funding for the direct farm ownership and operating loan programs. You can talk to any farm credit counselor in this State. Direct FmHA farm ownership and operating loans are systematically better tools for beginning and undercapitalized producers than are guaranteed loans.

In recognizing the need for rebuilding family farm units as a base for our State's economic development, the State legislature recently allocated $1.5 million for each of the next 4 years from the profits of the State-owned Bank of North Dakota to a beginning farmer revolving loan fund which provides reduced interest rate loans to eligible applicants.

Ironically, this almost matches the amount that is now available from FmHA for direct farm ownership loans. We look at the State program as a demonstration project. As I expressed in a recent message to Farmers Union members (March 3, 1989 North Dakota Union Farmer article attached), we hope it will lead to a renewed Federal commitment to rebuilding rural America by investing in the future of family farmers.

This is in direct contrast to the directions that are being advocated in the recent report put out by the National Commission on Agricultural Finances. That report is an ideologically based self-serving report which seeks to divorce Federal farm credit programs from what it denounces as "social policy."

We request this subcommittee to repudiate and reject the report of the National Commission on Agricultural Finances. The facts should speak for themselves. FmHA's direct farm ownership and operating loan programs are its most successful programs because they are targeted, supervised and limited.

In repudiating the National Commission's report, we would further request this subcommittee to develop the appropriate statistical base which clearly demonstrates the utility, low loss-ratio and success of the FmHA's direct loan programs. We believe that more detailed research is needed to demonstrate that direct operating and ownership loans are preferable over guaranteed and emergency loans as a matter of public policy.

It is our contention that if our Nation's farm credit programs do not serve a social purpose, such as providing increased opportunity for individuals and families to enter agricultural enterprises, there would be no real justification for such programs.

For example, as a State organization, we seriously question whether the Secondary Agricultural Mortgage Market (Farmer Mac) serves a useful societal purpose. To a great extent, Farmer Mac will provide federally protected financing at favorable rates to those who least need such assistance. That will only accelerate the concentration of agricultural resources, rather than to maintain a widely dispersed agricultural system.

We have to admit that we were frankly somewhat discouraged that the Agricultural Credit Act of 1987 did not differentiate between family farm producers and larger-than-family-farm producers in the rights and protections it provided to Farm Credit System borrowers. Even chapter 12 of our Federal Bankruptcy Code differentiates between family-sized farm operators and larger-than-family-farms. While we might argue where the cutoff should be between the two, we believe there should be a cutoff.

In addition, we believe that perhaps the single most prevalent problem within the Farm Credit System section of the act is the consistent failure of the newly reconstituted Farm Credit Administration to carry out its policy mandate as a regulator and arbiter of the Farm Credit System.

Time after time, the Farm Credit Administration did not provide the needed guidelines or establish procedures on a timely basis, leaving district-level and association-level boards and management without a uniform process or structure to follow in their individual efforts to comply with the provisions of the Agricultural Credit Act.

Frequently, the deadlines for actions mandated by the law from districts and associations came before the Farm Credit Administration had made a meaningful effort to address the concern.

We do not have specific instances to illustrate the failures of the Farm Credit Administration to aggressively carry out its responsibilities. But, based on our contacts and discussions with officials within the Farm Credit System, there appears to be an FCA pattern in not addressing the issues, needs and concerns of the districts and associations. This has left them in limbo trying to carry out their responsibilities. The information and regulations that have come forth seem to confuse rather than to clarify the situations.

There is a parallel in this pattern with the time period when FmHA consistently chose not to issue regulations or carry out policy in accordance with judicial determinations and congressional oversight.

The result that is most evident to us is that there does not appear to be uniform interpretation among districts and associations as to borrower rights and responsibilities. In addition, there has been a level of reluctance of informing borrowers of their rights or to refer disputes to mediation services. Part of that reluctance we believe can be attributed to the lack of leadership by FCA in setting standards and a fear level by associations and districts in entering uncharted waters.

Rather than becoming an "arm's length regulator," with established uniform standards and criteria for determining compliance, it appears to us that FCA is abdicating its role in favor of a wait-and-see-what-the-future-may-bring approach. We do not believe that is what Congress intended, nor do we believe the present pattern is a productive format for the future.

We do want to acknowledge that in North Dakota the Farm Credit Service associations and the State's farm credit counseling and mediation service have developed a level of accommodations with each other which we believe can lead to a more trusting and productive relationship for the future.

Again, we appreciate the opportunity to present our concerns to this subcommittee and this hearing. We pledge our support to the subcommittee and to Congress in moving forward once again to making the Farmers Home Administration and the Farm Credit System into the success stories of rural development and opportunities for a new generation on the land.

[Attachments, dated February 17, 1989, "North Dakota Union Farmer," "President's Message, FmHA's Record and Program Directions 'Need a Second Look' " and dated March 3, 1989, "North Dakota Union Farmer," "President's Message, Opportunities Cited for Shaping Rural Development," follow:]

PRESIDENT'S MESSAGE—FMHA'S RECORD AND PROGRAM DIRECTIONS 'NEED A SECOND LOOK'

(By Alan Bergman, President, North Dakota Farmers Union, North Dakota Union Farmer, February 17, 1989)

News stories are once again beginning to appear about the outlook and availability of agricultural credit for spring planting. Traditionally, these stories provide an optimistic perspective, declaring that credit should be readily available to producers.

The problem is not the availability of credit. There has normally been more than enough credit available.

The issue has been the terms of that credit and the capability of farmers in meeting those terms. The creditworthiness of a sizable portion of our producers with high debt-to-asset ratios remains a serious problem in North Dakota and other regions.

In the past, the Farmers Home Administration (FmHA) has been the source of both ownership and operating loans for these high debt-to-asset ratio producers. Many of them fell into the category of "beginning" farmers.

In recent years, however, FmHA has been systematically phasing out both its direct ownership and operating loans, and moving toward "guaranteed" loan programs.

Unfortunately, the guaranteed loans do not necessarily make loans more affordable to producers. Instead, they provide protection to the banker against losses.

Some are justifying this shift from direct to guaranteed loans on the basis of the experience in FmHA loan losses in recent years. They have used a wide brush to try to paint FmHA into a corner. Before we allow the core of FmHA's loan programs to be dismantled, we need to take a second look.

First, the bulk of the losses in FmHA's loan portfolios has not been in either the direct ownership or the direct operating loan programs.

In fact, when measured on the basis of loans that are more than 3 years past-due, these two programs combined make up less than one-fifth of the dollar volume of delinquent loans.

Direct farm ownership loans which are more than 3 years delinquent constitute only 6 percent of the total dollar volume of delinquencies. Direct operating loans add up to only 11 percent of that dollar volume. These are statistics compiled last year by the General Accounting Office (GAO), an auditing arm of Congress.

Where is FmHA having its biggest delinquencies and losses?

According to the GAO study, 83 percent of the dollar volume of loan delinquencies that are over 3 years delinquent are in the emergency loan programs. This includes both the emergency disaster and the economic emergency programs.

In fact, almost 90 percent of the delinquencies in the emergency disaster program are over 3 years old.

When measured on the basis of losses over a 12-year period, the emergency loans made up over two-thirds of the total farm program losses experienced by FmHA.

There are some lessons to be learned from these statistics. To understand these lessons we have to remind ourselves of how these programs operated.

Both the farm ownership and operating loans were targeted programs. You had to qualify as a family farmer and had to demonstrate a need for the credit and meet the "no-credit-elsewhere test."

The emergency programs were not necessarily targeted.

For a time under the emergency disaster program, you could receive low-interest loans by providing evidence that you experienced the required level of crop losses.

There was no "family-farm test." There was no requirement to demonstrate need of the loans, nor did you have to pass the no-credit-elsewhere test. The limits on these loans were over twice the limits on regular operating and ownership loans.

If you recall, Farmers Union was a lonely voice calling for reform in the emergency programs.

The abuse was rampant and evident. Some of the largest farmers in the region were the first in line for these programs.

In some instances, these low-interest loans were used to further expand landholdings and operations.

That is not to say that there weren't family farmers who received emergency loans. Frequently, when FmHA ran out of its operating loan allocation, family farmers were shifted to emergency loans as a substitute.

Unfortunately, the GAO study did not have a breakdown of emergency loan losses on the basis of whether the loan went to a qualified family-farm or to a larger-than-family-farm operation.

Yet, when compared to the targeted farm operating and ownership loans, it appears the bulk of dollar losses in emergency loans, would fall in the category of larger-than-family-farm producers.

There is one other factor that we must remember in looking at this picture.

As most county FmHA directors will readily admit, it became almost impossible to supervise the emergency loan portfolios. The larger-than-family farmers openly refused to be supervised. and many family farmers were understandably indignant when supervision wasn't uniformly applied.

The loan loss and delinquency rates in the emergency loan portfolios reflect this failure of supervision.

After looking at these statistics and records, it is simply unfair for Congress or the United States to "throw the baby out with the bathwater."

The direct farm ownership and operating loan programs should not be dismantled or phased out.

The lesson we should learn is that we must target farm credit programs.

The nation has a legitimate and justified role in helping family farmers share the risks of the marketplace. We need to eliminate the abuse of these programs, not the programs.

PRESIDENT'S MESSAGE—OPPORTUNITIES CITED FOR SHAPING RURAL DEVELOPMENT

(By Alan Bergman, President, North Dakota Farmers Union, North Dakota Union Farmer, March 3, 1989)

Rural development has become the catch-all solution for curing the problems of rural America. While we are increasingly being told that rural development is the answer, we are also finding that rural development proposals are not very likely to be well defined, and even less likely to be funded.

Too frequently, those who are the advocates of rural development are also the doomsayers who believe that current trends in the rural economy and our rural society are inevitable. They have doomed family farm agriculture and our smaller rural communities to oblivion. Therefore, they conclude that we must find new enterprises and new methods of sustaining rural America.

Rather than building on the resource base of agriculture and finding ways to stabilize that base and to maximize the opportunities from that base, we are being told by these crystal ball gazers that we can no longer depend on agriculture for our future.

Rather than looking at how to rebuild family farms and rural businesses, we are being told that they need to be replaced with other enterprises and other structures.

This makes rural development an even more illusive goal.

We are being told to find something different that is not yet known or tested to serve as a base for the future of our livelihood and our communities.

We are being asked to place our trust and our hope in some technological or informational innovation that will somehow find a home in rural America.

There is no question that rural development is needed to expand our economic base to supplement our agricultural economy. But if we do not continue efforts to build our agricultural base, rural development will not be successful.

Is rural development going to be meaningful, or is it becoming a smokescreen to draw attention away from the declining level of public investment in rural America?

The 1990 Federal budget proposals for small community and rural development programs within the U.S. Department of Agriculture would reduce program levels by almost one third, from $11.6 billion to $7.8 billion.

This includes Farmers Home Administration (FmHA), rural housing and rural electrification.

FmHA farm loans would be decreased from $4.9 billion in 1989 to $3.7 billion in 1990.

The total available for farm operating loans would be reduced, and more of the operating loans would be shifted from direct loans to guaranteed loans.

Only $50 million would be available, nationwide, for direct farm ownership loans. This would mean that North Dakota would most likely have an allocation of even less than the $1.8 million allocated in the current 1989 fiscal year.

This direct loan level had been committed even before the 1989 fiscal year began and was distributed to 23 borrowers, with an average loan of $78,000 each.

If rural development is going to be successful, this Nation and this State must increase the opportunities we provide to beginning farmers.

FmHA's direct farm ownership loan program is a good measure of that commitment. It wasn't too many years ago when North Dakota was being allocated 10 to 15 times the current level of FmHA direct farm ownership loans.

As we outlined in this column in the last issue, these FmHA farm ownership loans are being unfairly categorized with FmHA loan programs that were not well-targeted or supervised. They are not the source of large losses in FmHA loans.

If we are to rebuild rural America, we must reverse the trend to the funding levels for FmHA's direct farm ownership program. But, we must also do an even better job of targeting the assistance and in making sure the program participants have a reasonable chance of success.

The critical years for beginning farmers are the first 10 years of their farming operation when they are trying to build the necessary equity to become independent operators. We need to do a better job of targeting FmHA programs to this initial equity-building period.

This would mean a number of things.

First, we must provide farm ownership loans at an interest rate and repayment schedule that allow the beginning farmer to build equity in the farm unit.

Second, we must target the program. The program should be designed to assist those producers who otherwise could not get started in agriculture. The program should also have realistic limitations, so that more farmers can participate.

And third, we must do a better job of graduating the producer out of the program when adequate equity has been built.

In other words, we need to return to the original concepts of the FmHA program and then do a better job of adapting those concepts to the specifics of our current conditions.

North Dakota has an opportunity to provide some leadership in developing appropriate beginning farmer programs. The State Senate has passed SB 2501 which would allocate 15 percent of the Bank of North Dakota's profits annually to a beginning farmer revolving fund.

Ironically, this fund would almost match the current level of FmHA direct farm ownership loans.

But its greatest potential is to serve as an ongoing demonstration project in assisting beginning farmers. This is an example of solid rural development that speaks to the needs of North Dakota and to the future of our State.

We hope it will lead the way for a renewed Federal commitment to rebuilding rural America by investing in the future of family farmers.

PREPARED STATEMENT OF FRED LARSON, MEMBER, BOARD OF DIRECTORS, NORTH DAKOTA FARM BUREAU, GRENORA, ND

As this hearing shows, farm credit in the 1980's is a very serious and sensitive issue. We have gone from the free-wheeling, ever expanding, and easy credit of the 1970's to the lower land values, higher interest, and tight credit of the 1980's. As we move into the 1990's, what will we see in farm credit? Hopefully there will be an easing of interest, stabilization of land values, and a moderation in the credit market.

Well, so much for history and future dreaming. We in agriculture have had to endure many forces beyond our limits and control. They are as diverse as the weather and the whims of foreign markets, but one of the hardest to come to grips with is the financing of our farming operations. The capital intensity of our business as it has become in the last two decades has shaped us into what we have become and not necessarily what we want to be. No longer do father, mother, and children work together doing chores and taking care of the daily details of the family farm. Now you have one or all working off the farm just to survive and hope for the better times ahead. It sounds as though we could close our eyes and go back to the 1920's and 1930's, because we have had our drought in this decade as well.

As there was in the past, laws were enacted to make the transition to a new lifestyle easier or with the hope that we would be able to continue farming. So now do we have them. One of these was the Agricultural Credit Act of 1987. For some this law was passed too late, for some it was passed just in time, and for others, it just doesn't make any difference at all. Some farmers either decided to get out before they lost it all or they were forced out before it was all gone. Some farmers were in a position to hold on long enough for the legislation to be of a help to them. Some farmers were unable to be helped no matter what law was passed and some were in a financial position that they needed no help, for which they are to be commended. The reasons behind these stories of failure and success are as varied as are the people themselves that are involved. Whether it be a timely rain, buying that extra land before prices rose, or just paying off the debt and not having to pay the high interest rates, or be it the inverse of these situations that put them in the position that they were in. The ones that we are here today to talk about are the ones who were affected by this law, those that were in financial trouble at the time of its passage. Those people are not necessarily guaranteed success because they have benefited from this law, but they have been given a chance to succeed. Although all lenders have been somewhat impacted by this legislation, probably the most affected has been the Farmers Home Administration. I believe that to most administrators at the county level the law is a good one. Two of the biggest drawbacks that I have heard about the law are that it has created a lot more paperwork and that people had to go out and try to implement it before all of the rules and procedures were established for it. These are comments from various lenders in my area. If you talk to the farmers, they do not like the paperwork, some feel that it doesn't go far enough to help and others believe that it goes too far and since they have paid their bills on time why should the other guy get such a big break. Where do you draw the line and when do you say "Enough is enough, it is time to move on to something else." This law has set some of those guidelines, whether they are good or bad is a question that only time will be able to answer.

To put some figures on how this law is working or is not working from whatever point of view you may want to take, in my county there were 38 packets sent out by FmHA to farmers who were in financial trouble. Of those 38 only 14 responded. That means that 63 percent of the packets sent out were not returned for one reason or another. The most generally held belief is that these people are no longer in farming for one reason or another. In these cases the law was enacted too late to do any good. Of the 14 that are left 4 qualified for write-down, 3 qualified for rescheduling, which they might have anyway, 1 was turned down, for which there is an appeal process available. The last 6 are in mediation with other lenders to try and work out a rescheduling of all debts, to see if it is possible to make things work.

As far as the other lending institutions are concerned, it does not have as great an effect, because they are not under direct Government control. Some of the things that it does do is that it forces them into mediation rather than letting it be voluntary; it sets down time limits; and it possibly opens up the lines of communication between lender and borrower which have been strained to say the least throughout this process.

To those borrowers who thought that it was going to be the answer to all of their problems, it is not. It sets down rules and time limits for them to respond and if they want help from mediation or some other means, it forces them to respond and return information to their lender who they may have just ignored before. It also gives them a lot more paperwork, but it may also give them better records and the ability to keep track of where they are and where they are going.

In closing, I would like to say that there have been some successes with this act in that it has allowed some people to remain out on the farm and there have been some cases who have not. I think that we all have them in our own area and no one likes to be thought of as a failure, but maybe they can find something else in which to make themselves a success. Also, throughout this process we have gotten some lenders to use more prudent lending practices and work with their borrowers more closely so as to avoid the problems of the past.

PREPARED STATEMENT OF ANDREW HEINZE, GRAIN AND BEEF FARM, MEMBER DAKOTA RESOURCE COUNCIL/NATIONAL FAMILY FARM COALITION, DAZEY, ND

On behalf of Dakota Resource Council and the National Family Farm Coalition, I'd like to thank Senator Conrad for bringing this oversight hearing to North Dakota and for the opportunity to be a part of this panel addressing the problems we here in North Dakota face regarding FmHA's implementation of the Ag Credit Act of 1987. Dakota Resource Council is a grassroots membership organization of farmers, ranchers, and small business people dedicated to the preservation of the rural community and its agricultural economy. We are a part of the national family farm coalition based in Washington, DC, which represents 42 member organizations such as ours in 35 States. The coalition advocates Federal policies that strengthen and protect American family farming.

My wife, three small children and I operate a diversified farm by Dazey, ND. While we have always managed with a cognizant view of sustainable agriculture and a resourceful agricultural economics approach, we, as with our organization, feel that continuing problems with FmHA's deliverance of the congressional intent of the Ag Credit Act of 1987, will discourage rather than encourage family farms and the sustainability of agriculture. Dakota Resource Council and the other member organizations of the NFFC see this as happening and we would like to go on record as expressing a very real concern for the future of agriculture.

We are here today to help expose FmHA's further disregard of the congressional intent to aid financially strapped family farmers. Borrowers who have had to journey through the maze of technical calculations often come out wondering if the aid they supposedly received would only expedite their moving off of the farm? In some cases the DALR$ program functioned in the manner it was designed. Where the appraisals could show that the equity was the true value and the net recovery reflected FmHA's secured position, the farmer's choices were in black and white. Our questions regarding the DALR$ program is twofold:

(1) Why is the program confidential? We believe that a borrower has a right to not only know the figures and calculations but have a chance to use the DALR$ program to verify FmHA's figures.

(2) How can a program, with as many reported revisions that it has undergone, be used to determine one's fate?

We ask that the program have a backup calculation system so that there may be a checks and balances on the DALR$ program.

There were many "armchair" appraisals done on cattle, land, and equipment that could just be the beginning of a borrower's venture through the tar pit and briar patch. In my situation, there was such an appraisal done on my cattle and equipment. Also the Farm Plan and cash-flow were changed to the programmer's personal flair without any notification. The signed document could be manipulated fractionally and the outcome could become quite different. Then I am offered net recovery buyout at an appraisal done from a remembrance that the equipment was there at the last inventory check. When I hired an inspection from the FmHA approved appraisers list the experienced person determined a value that is just over 50 percent of what FmHA had appraised. Upon offer of net recovery buyout I am immediately offered mediation with scant explanation on why my Farm Plan did not work although debt payments and cost of living were structured in a manner that I could afford and satisfy all secured creditors. Upon acceptance of mediation it was discovered that FmHA appraisals were not a point to mediate on, in fact the appraisals were "set in stone" so to speak. In order to obtain any benefits of mediation I would have to terminate mediation and go through the appeals process. How may the outcome of an appeal work to the benefit of the borrower? Why isn't mediation a time to sit down and resolve points of difference? Dakota Resource Council asks that FmHA be required to use the mediation services available and participate with as much "good faith" as they require of the borrower. We also ask that all points of difference be brought forth and be worked out, not just a few or holding back on appraisals. We also request that a borrower be allowed to bring either a court reporter or his/her own tape recorder to the mediation session. Right now this is not permitted in many counties and we would ask that it be a borrower's right.

We have also seen FmHA deny partial release of income for family and farm expense. In my own case FmHA would not even consider a partial release. I had to use money that could have been paid to other secured creditors to sustain FmHA chatteled livestock. A real mess is created when FmHA believes that moneys should have went to pay on their unsecured notes and other secured creditors will have to go without payments. I asked the FmHA Supervisor what I should do with my established marketing plan of livestock. He said that I could sell them and hold the check as long as I did not try to convert. He did not tell me that there was an appeals process upon formal denial of release of funds. Ignorance replaced law in my case and I am now just trying to get money released from livestock to care for them and to provide some return on labor and provide for my family.

I am here today not just to elaborate on my situation, as it is just one example of many situations in North Dakota. While I speak for myself on some points, what has happened to me has happened to many others. Why is a farmer shielded from what may be in his best interest?

The Administration has set forth publicity that has put a bad face on small farmers. We believe, due to the proliferation of the public attitude that farmers are given all the advantages and the orchestration of laws that the Administration did not like, the farm character will demise. This makes family farms look greedy when actually the opposite is true. As a matter of fact most operations decided to keep expansion to a minimum, because of the basic understanding that every bigger farm removes another family farm from the community. If it were true that family farmers receive all the breaks, so to speak, why do so many have a struggle to provide for their families? Why can you see many shopping in the nearly new store and driving cars at least 15 years old?

We believe that it was William Jennings Bryan who said, "City people should never be more than one generation removed from the farm or they will lose the understanding of what it takes to produce the food and fiber we all enjoy." While that may be somewhat unrealistic in today's society, there is still much truth in that statement. The general public does not understand what it takes to provide healthy farm produce. Our rich soils are often mined of their humus and nutrients so that a farmer can make ends meet. This leaves soils vulnerable to erosion and environmental degradation. A great deal of money is used to administer efforts to conserve soil. Maybe we are missing the underlying cause of many of agriculture's and the economy's problem. Maybe the wealth of a nation is determined by what raw material wealth it produces times an equitable price achieved from that abundance. We believe that "wealthy" could again be a word describing a vast majority of Americans instead of just a chosen or lucky few.

Thank you for this opportunity to speak to you today. Are there any questions?

[Letter of Andrew Heinze to Senator Kent Conrad with an attached public document from the ACRES U.S.A. Editor, Charles Walters, Jr., entitled "INTERVIEW: Fred Huenefeld and the Bankruptcy Scene" follow:]

ANDREW HEINZE, GRAIN & BEEF FARM MANUFACTURING, LAND IMPROVEMENT, SOIL ENHANCEMENTS,
RR1 Box 86, Dazey, ND, May 1, 1989.

Senator KENT CONRAD,
U.S. Senate, Washington, DC.

DEAR SENATOR CONRAD: I am forwarding the personal testimony outline as given at the field hearing on April 26, 1989, at Bismarck about the implementation of the Agricultural Credit Act of 1987.

I would also like to enter into the record a public document from the Acres U.S.A. Editor, Charles Walters, Jr., entitled "INTERVIEW: Fred Huenefeld and the Bankruptcy Scene." (I have his personal permission to enter this and if there are any questions please give him or I a call.) The article is self-explanatory and gets to the pointed cause of why this "ACT" even if administered in the most benevolent fashion may not aid agriculture's problems for much time at all.

Another problem that needs to be addressed is the amount of money available to families. Congress implemented release of funds for family living expenses not to exceed $18,000. From my understanding this release is no longer applicable. FmHA will again use all funds before a release has to be made for family living. In the event of a natural calamity farmers may again be left without the means to sustain their families.

I would also like to extend a special "thanks" to you Senator Conrad for your hands on insight into the problems that are facing the farmers in our State. The atmosphere that you brought forward at the hearing was taken by all in very high regard.

Very Respectfully Yours,

ANDREW HEINZE.

INTERVIEW: Fred Huenefeld and the Bankruptcy Scene

Fred Huenefeld of Monroe, Louisiana is past president of NORM. He is a professional in the bankruptcy field, and recently he was a guest on the Acres U.S.A. Radio Program. What he had to say as a trustee in bankruptcy was so electric and pregnant with thought, the tradeoff suggested itself of an Acres U.S.A. interview. A month ago, as we closed the March 1989 issue at 5:00 p.m., C.S.T., the national debt stood at $2,195,139,857,700. This month, as we put in the last line of the April issue, the national debt stood at $2,737,976,358,396. There is a wild voltage running through the American economic system. One index is the national debt. Another the bankruptcy index. Fred Huenefeld is a capable spokesman on both subjects.

ACRES U.S.A. Mr. Huenefeld, right up front, just what do you do?

HUENEFELD. I am trustee in bankruptcy for the United States Bankruptcy Court for the Western District of Louisiana. I administer the bankruptcy estates of those who file chapter 7 bankruptcies.

ACRES U.S.A. Do you deal with chapter 11 or chapter 12?

HUENEFELD. My dealings with chapter 12 are nil. I am not handling any of them, although most of those who file chapter 12 normally come by my office and visit with me because they're friends of mine in agriculture. I might mention that I am a cotton farmer and have been involved in agriculture for 30 some years.

ACRES U.S.A. How many cases are you handling at any given time? We ask this because the case load of people going through bankruptcy is something of an index of what's happening in our economy, especially in our farm economy.

HUENEFELD. I'm handling approximately 600 bankruptcy cases that span over about a 2 year period right now. We've had a real increase in the last year and a half or 2 years—a particularly large increase over the last 4 years and a tremendous increase over the last 5 or 6 years. I am one of four trustees in northeast Louisiana, which is basically an agriculture and rural area.

ACRES U.S.A. What's happening?

HUENEFELD. There's no question as to what is happening. There's no earned income in the economic system because of the failure of political leaders who have abdicated their responsibility to structure the correct policy to get earned income at the beginning of the economic cycle. The physical economy is the beginning of the economic cycle, and if you don't have the correct policy at that level then the whole system *debt finances*. That's what happened in America since 1952. It has exploded in the last 10 years for two or three reasons. The main one is debt. Debt has exploded so fast that simple interest compounding itself has grown completely out of perspective. We're like the captain on the *Titanic* in our administrations. I don't care who's in power, he's like the captain of the *Titanic*.

ACRES U.S.A. He's rearranging the deck furniture, but he's not doing anything about the collision course?

HUENEFELD. No question about that. No one has addressed the economic issues you have addressed for a number of years in *Acres U.S.A.* They have not perceived or understood what our forefathers said in Article 1, Subsection 5, Section 8 of the Constitution—that you regulate the value of money. Money is only a medium of exchange for a pound of cotton or a barrel of oil, or whatever. If you have 500 gallons of oil, and I have 500 pounds of cotton, and you need only 2 pounds of cotton for your shirt, and I need 1 quart of oil for my car, we use money as a medium of exchange. This is Biblical, it goes back to the beginning of man. Money is only a medium of exchange. The Constitution says you regulate the value within your economic system, within your sovereign nation. We haven't done that.

ACRES U.S.A. Well, we can't do that because we have decided to go into the world-running business. As a consequence we have globalized cotton, we've globalized the storable commodities wherever they're produced, so whether or not they fetch a price that's in line with what they have to be for an American isn't germane as far as our political leaders are concerned, wouldn't you say?

HUENEFELD. We have no political leaders other than a very limited few who perceive that this is a sovereign nation state. You are a sovereign individual. If I walk up to you and slap you in the face and hit you in the stomach and steal your wallet, I cheated you. I just free traded you. But if I walk up to you and start to hit you and you knock heck out of me, you protected yourself. You protected your life, liberty and the pursuit of happiness—your inalienable rights. There are only two economic systems in the world. The first one, free trade, means cheating. It is the colonial, imperial system that we fought the American Revolutionary War against. It is called free international trade. The second one is the American system of economics. It says that I must protect my sovereign nation. This is the one we taught the Japanese. The Taiwanese are functioning under it and so is South Korea. On Taiwan, they have the exact same Chinese culture as mainland China, yet China is in debt bondage and in poverty. Taiwan has exploded in prosperity and has surplus trade budgets.

ACRES U.S.A. Well, it's difficult for people to comprehend these points. We've talked about them a great deal. We've written about them for 30 years now, but the man on the street has a very difficult time understanding, and we wonder if maybe you could help us? You're dealing with these fellows after they have finally consumed their capital and can go no farther, and now they have to bring in a dictator, a bankruptcy judge, and set aside the rules of commerce. For instance, you have catfish growers in Louisiana. Let's take a typical catfish grower, because I know they're under tremendous assault from imports. Can you tell us a little about that problem and then follow it through?

HUENEFELD. Let me give you a specific example of a couple that I've handled. The catfish farmer in Windsboro, Louisiana has to get approximately $1.99 a pound for that catfish when it's delivered to the grocery market. He gets his 60 or 70 cents a pound. It goes through the local processor. They hire minimum wage people—I'm talking about old ladies and men who should be at home, or young ladies who should be tending to their children. They're working in this processing plant that pays them a minimum wage and works them less than a 40 hour week so they can get away from paying social security or retirement. By the time that catfish farmer in Louisiana pays for his pickup truck and his tractor and lives in a house with electricity and has a telephone, he has to get $1.99 a pound for his catfish. I went to a local grocery store in north Louisiana. The catfish crop from Brazil was selling for $1.29 a pound in the same ice, the same counter where catfish from Windsboro capped at $1.99 a pound. You know which one the folks are going to buy.

ACRES U.S.A. It would seem that it would cost them something to bring it up here, but you're saying that even adding that to the cost you have in Brazil lays in that catfish on the retail counter at $1.29 a pound. That's incredible!

HUENEFELD. The incredible part about it is Brazil is forced to pay people 10, 15 and 20 cents an hour. Many live in mud huts. They walk to work. They frequently wear no shoes, and because of the policy of the International Monetary Fund the Brazilian Government is forced to sell raw materials at a cheap price into our economic system. This is putting our people out of business. What happens to the local farmer in north Louisiana when he finally has to file bankruptcy? The first person who loses is the local merchant or the local tractor dealer or the local feed store or the Louisiana Power and Light, or the Telephone Company, and then the bank has to absorb a loss. And when the bank absorbs so many losses, then the bank is taken over by the FDIC and the taxpayers end up bailing out the bank to guarantee the depositors of a private corporation, FDIC. The domino effect is awesome. People have to understand distribution. If the farmer can't buy the pickup, then the manufacturer doesn't make it. The employee is laid off, and he can't buy the bread, he can't pay his house note, his car note and the baker doesn't bake the bread and he doesn't buy the wheat from the elevator and the elevator doesn't buy it from the farmer, so the system disintegrates. That's why you have to regulate the value of the physical economy with monetary policy by getting a minimum of 90 percent of parity on the cost of production of the physical economy with a cap of 115 percent. That stabilizes the economy. That's what Roosevelt did; in effect, that's what Abraham Lincoln did; that's what James Monroe did; that's what John Quincy Adams did. That's what Hamilton laid out in 1790 for the manufacturers at the request of George Washington. Until we have leaders who perceive and understand this, we're in deep trouble. That's what Henry Clay did when Daniel Webster finally joined him in 1824 to settle the issue of tariffs.

ACRES U.S.A. We've had some developments which we will go into as we proceed with this program. A point we would like to make though, is if that man in Brazil is working at 10 cents an hour, he hasn't enough earnings to be able to consume the production that his labor has accounted for, has he?

HUENEFELD. That is absolutely correct and the most drastic of all circumstances is their children are starving to death, their stomachs are swollen. You have something like 50,000 children starving to death in the world every day. In Brazil 1,000 a month starve to death month after month, and the mortality rate between 1 and 5, as you know, is unbelievable. Now here we are international bankers forcing those countries to sell those cheap raw materials and killing their own population.

ACRES U.S.A. In the meantime internationalists are tearing down the rain forests in Brazil and there are approximately 102 different tribes migrating to Rio de Janeiro and to Sao Paulo and to other big cities. They migrate down there, they arrive without papers so the only thing they can do is set up homes in tarpaper shacks and starve.

HUENEFELD. As you know, the rain forests' type soil will last only a few years in farm production, and you certainly change the cycles of weather, which is probably creating drought conditions in the United States.

ACRES U.S.A. Well the Amazon, of course, is the lungs for much of the world, and we're taking that lung tissue and carving it to pieces.

HUENEFELD. Of course this is not only happening in Brazil, but other foreign countries are forced into the same posture. I see things happening to that farmer in north Louisiana. I have talked a couple of them out of committing suicide. The first thing that happens to that northeast Louisiana catfish farmer or cotton farmer is that he and his wife start arguing, and he doesn't come home at night, and she's forced to work at the WalMart store for less than minimum wage because they give her only 30 hours a week. When she comes home she's too tired to really take care of the children and work with them and give them the love and tender culture that they need to be productive, developing citizens. The husband is staying out late with his friends. He comes in and they get into a family argument, and the first thing that happens is they stop going to church, they get mad at each other and they think they are failures. Yet they are not failures. The system has failed because of the political leaders who do not perceive the natural law. They do not understand what God said when He said, *Be fruitful, multiply and subdue the land and I give you domain over all,* and when we pass laws that oppress people and take property away from widows and orphans, what are we going to do when God punishes us? That's what happened to that catfish farmer in north Louisiana. His property has been taken away from him, his family has left him, he becomes a useless, listless citizen and the next thing you know he is doing nothing productive. This is the crime that is taking place.

ACRES U.S.A. The temptation for the man is to say to himself, *I am a failure, this is my fault,* and if there is a divorce in the family, of course, the farm goes. There's no saving it then, is there?

HUENEFELD. I would say 98 percent of the 600 bankruptcies that I've handled in the last 2 years, 98 percent of those people are not failures. They have been told by their county agent or their banker or their preacher that they are failures. The preacher says, *You're not giving enough to the church so that's why you failed.* The banker says, *You're not taking care of your business, that's why you failed.* The county agent says, *You're not a good farmer because you're not productive enough.* Then the consultant and the CPA give their opinions, and by the time those people come into court and sit down across the table from me, they think they are failures. The first thing I tell them is, *It's not your fault what's happening.* It's the failure of the political leaders who have abdicated their responsibility of self-government. They do not perceive and understand what that United States Constitution says and they don't study and they don't want to turn this country around and consequently you're going to suffer.

ACRES U.S.A. Well, we have the word from authorities as high as the President that we have to become more productive. We have to meet our competition—they love that term *trading partner,* which is kind of a contradiction, but they love it—and they say we have to be able to produce catfish to put them on the counter the same as Brazil. What are the reasons why this Louisiana farmer can't do this?

HUENEFELD. Because he doesn't want to live in a mud hut and walk to work and work for 10 cents an hour. If that farmer lowered himself to that standard of living then he wouldn't be able to have that house and he wouldn't have a telephone and he wouldn't have electricity in the house, he wouldn't have the pickup truck and his children would grow up in ignorance because they wouldn't have enough money to pay for the school programs. We would not be able to keep the infrastructure up. Right now in Windsboro and Franklin Pass, Louisiana, there are potholes in the road, the school board is in trouble, the local governor has said, *I'm cutting all programs to schoolbus drivers—that just came out about 3 weeks ago—and then he said, I'm going to try to give the teachers more money but we're cutting the school lunch program.* It's going to be the local school board's responsibility. Consequently they are going to have to raise taxes at the local level. How can you tax a farmer who's not making any money?

ACRES U.S.A. From what you're saying, even if he did what the Brazilian does, and lived in a little shack and walked literally barefooted, that wouldn't relieve him of dealing with OSHA regulations, Social Security, unemployment compensation, workmen's compensation, health insurance, you probably could think of a half a dozen other things.

HUENEFELD. All those programs that you just discussed, Social Security, unemployment compensation, aid to dependent children, subsidized housing, meals on wheels, all those $500 billion of cost to the Federal Government would not exist if that farmer was getting a fair price for what he produced based on the cost of production. Moreover, you then would have the earned income in the system to create the wealth so that our people could purchase what he produced. Then we will let Brazil sell into our economic system after we consume what we produce based on our standard of living and they could sell at our price level, and the reserve would go into our trade balance. Well, this is what Hamilton laid out. This is what Matthew Carey explained. This is what Ben Franklin said. This is what was done by Roosevelt and Truman from 1942 to 1952 under a 90 percent of parity policy and the reciprocal trade agreement. We had prosperity and the banks only had $16.9 cents loaned out at one time. Today, the banks and the Federal Reserve report that I saw 3 weeks ago have loaned out $1.22 for every dollar that's on deposit. They borrow 22 cents of every loaned out dollar every day to keep the doors open.

ACRES U.S.A. They do this with electronic transfer. It's a house of cards and a Mickey Mouse game and the big question, of course, is how long can this be sustained?

HUENEFELD. Well, it's just as I pointed out to you earlier. The President of the United States is the captain of the Titanic and he's going full speed ahead, and if he doesn't change the course, you know what's going to happen as well as I do. Citizens reading this conversation must have the courage to become patriots who address the issue of constitutional, democratic republic. We are not a pure democracy, we are a republic where enlightened statesmen are to perceive the prosperity of commerce and make that the primary object of their political cares. We are not doing that today because the citizens are not accepting their responsibility and consequently we're going full steam ahead to the iceberg.

ACRES U.S.A. You mentioned Matthew Carey and Henry Carey. Have you read *Harmony of Interest* per chance?

HUENEFELD. Yes. One of the most magnificent, most fantastic books I've ever read was written by Henry C. Carey in 1861. This book is a report of economic classics which include a number of works that Henry Carey did. This is the book that E. Smith took to Japan to teach the citizens of Japan in 1869. Henry Carey understood this, and he was the economic advisor to Abraham Lincoln. This is why Lincoln said, *If England builds the rails, they get the money and we get the rails, but if we build the rails we get the money and the rails.*

ACRES U.S.A. So if we grow the food and if we have enough income distributed on a broad spectrum basis so that people can consume the food, then we have both the money and the production?

HUENEFELD. Yes. I think the most magnificent point brought out by Henry Carey in *Harmony of Interest* is that we are the American system of economics for it is the only one ever devised to elevate and equalize the condition of man throughout the world.

ACRES U.S.A. Not just the United States, but the world? Isn't this the same thing that Pope Paul VI called *equity of trade?*

HUENEFELD. Absolutely correct, and the Pope laid out specifically in that particular document in his discussion that the human bondage in Russia is no different than the debt bondage in the United States of America under the capitalistic system. The capitalistic system evil existing today is free trade.

ACRES U.S.A. Free international trade?

HUENEFELD. Yes. Free international trade predicts and looks toward universal war. Free enterprise looks toward universal peace, and citizens should understand that free trade is evil, that it is genocide, that it is bad, that it causes debt bondage, that it lowers the standard of living, that it creates ignorance and depopulation and barbarism. That's what free trade does.

ACRES U.S.A. *Free trade* because of this tendency to dehumanize the producing country so that goods can flow to the high market until it pulls the high market down. This is what the World Bank does when it goes to Africa and dispossesses people of their little 5 and 10 acre plots of soil and makes great big plantations so the stuff can be exported to the United States, but the locals get to starve?

HUENEFELD. That's right. It was pointed out so explicitly by Ben Franklin when he said, in effect, *Nations create wealth in only three ways. You have war and* *you take it. You have free trade and somebody cheats and makes an awesome profit. Or you have the miracle of the productive sector of the economy, the physical economy.* Free trade is better explained when I cheat you by hitting you in the stomach and face and stealing your wallet. That's free trade. If I start to hit you and you have the policeman arrest me, you've just protected your life, liberty and the pursuit of happiness.

ACRES U.S.A. But you know, to listen to our economists and our political leaders, they make what you're saying sound like a dirty word really, *protectionism!*

HUENEFELD. This was planned, it all started in 1918 when new principles of teaching were brought into the educational system. They started expanding on the law of supply and demand and *the invisible hand of the market* the stuff Adam Smith put out in a book called, *The Wealth of Nations.* Adam Smith was hired by the Earl of Shelburne, who controlled the British East India Company and the British army that furnished the troops that we fought the war against. The law of supply and demand and the invisible hand of the market became maxims. Yet the only invisible hand is a pickpocket. Jeremy Bentham and the theory of pain and pleasure, and the lot of them held that the individual had no control over his own destiny.

ACRES U.S.A. You say they are going bankrupt not so much because of their own failures—except in a very few instances—but because the economic system has been so arranged to make this necessary?

HUENEFELD. That's absolutely correct. Fully 98 percent of the cases I'm handling—these people are good people. They are not failures. Two to 3 percent of the cases, the people may be bad businessmen or maybe failures. I've been doing this work now for 30 odd years; 25 or 30 years ago I was handling one or two cases per month. Now those were cases of men who had either gotten on alcohol and took to running around, or just didn't take care of the business, and they got in trouble. Now, I'm handling 30 and 40 cases per month and these are good God-fearing people who are responsible in their church, who have tried to hold their head up and by the time they get in the bankruptcy court they think they have been failures and people look at them as disgraced.

ACRES U.S.A. When you explain what is happening to them, are they able to comprehend this?

HUENEFELD. The first thing I do is draw a little graph on a piece of paper in front of them. I put an X on it and I say, *This is the physical economy, the farmer, the cotton grower, the oilman, the fisherman, the treeman, that's the beginning. The clothes you wear, the food you eat, the house you live in, the car you drive, all come from right there. From that point forward everything is relative in the economic cycle of distribution. It's in your encyclopedia up until 1986. They took the word out in 1986 so they could confuse the American public.* Then I put about six little squares, the farmer, the elevator, the baker, the grocery store, the employee, the manufacturer—and the tractor dealer and the farmer are circled. Then I say, *Now when the beginning fails and he can't buy the pickup the manufacturer don't make it and the employees are laid off. The baker doesn't bake, the elevator doesn't buy the wheat. So the system collapses. This is where you are, the system has collapsed, there is no earned income and so you're not at fault. By that time you can actually see their faces light up and they walk out and feel like they are human beings instead of somebody chained in debt bondage.*

ACRES U.S.A. You almost have to be familiar with what's happened in the last few weeks. The Farm and Home Administration has started papering farmers. What they have presented them with—as we read it here—is a sort of a contract for foreclosure and, once they sign it, it appears to us that the farmer has abdicated his right to his day in court, or his right to have the lender go through the foreclosure procedure. He can now bring down on him all kinds of arrangements. He may rewrite him and he may even forgive some debt, but if he forgives some debt it looks like the IRS will levy on that write-down as income, and the farmer will be back in the same spot he was before he started this procedure. Are you running into these Farm and Home cases?

HUENEFELD. You hit it pretty well right on the head. I have talked to legal counsel discussing both perspectives as you have laid them out. The one perspective is if that tremendous write-down occurs and they do restructure—if they can—they are then liable for taxes and the unfortunate part about it is that you can't do away with it. There is a quirk in the law on this tax thing: if they can tie it back to when the liability occurs, then it can be written down, but that's real tricky. In 600 or 700 cases I have handled recently, only three or four times have we been able to dismiss the taxes. The problem is going to be that the farmer could be liable for the taxes, so what I guess I'm saying is that each individual situation has to be weighed carefully. I can't advise on a blanket basis.

ACRES U.S.A. Well, we're trying to tell the farmers who want to listen, where did they get this 45 day thing? They just sort of sucked it out of the air. And the farmer is supposed to ask *How high?* when they say jump. Do you think 45 days is enough time to get the right kind of counsel?

HUENEFELD. No. It's absolutely ludicrous. Number 1, they caught it right in the middle of the Thanksgiving and Christmas season. Most of the institutions where they are supposed to get affidavits as to the amount of their liability can't perform. We in Louisiana are even worse because we have a Federal land bank system that is in receivership. As to legal counsel, most of them won't even touch it because they don't know how to do it themselves. A few I know have the computer program. They are working with some of the farmers, and bless their hearts, they are charging these farmers $2,000 to $2,500 to run this paperwork through the computer they say, *Here are your options.*

ACRES U.S.A. Although you can't really advise one way or the other, you don't seem alarmed at what was said here.

HUENEFELD. I concur that you are making a very valid statement. It's a Catch 22 situation. It's heck if you do and heck if you don't. All I can say is that each situation has to weigh its own circumstances based on a number of factors that I'm not aware of. Some have carry-forward taxes. They may be advised to sign it.

ACRES U.S.A. One thing is certain, if we go and remove half of the farmers from the land, we're certainly not going to have broad-spectrum distribution of land and therefore of income.

HUENEFELD. What even scares me more is the USDA advocating the Conservation Reserve Program. They just came out this last week and said, *Now you can take wetlands that you've taken out of forests and put into soybeans, you can now put those acres into a conservation reserve program and we'll pay you $40 to $45 a year for 10 years not to farm it.* Here we've got 50,000 people starving to death in the world each day. We're only producing 12 bushels of wheat in the world today per person, and we need 24 to have a normal diet.

ACRES U.S.A. We say 50,000 to 55,000, but we want to make this clear so the readers can understand. Were talking about 50,000 to 55,000 people starving *a day.* Not a year, not a month. In the meantime we import so much red meat and our farmers can't use up all their feed grains and we break the rancher and then we break the farmer while we're doing this.

HUENEFELD. What we've done over the last 30 years—in seven recessions—is we borrowed money on the inflated values of our assets. As the economy went through the recessions and depressions since 1952, when we changed monetary policy, each recovery temporarily occurred when we inflated the value of our assets and borrowed money. We now owe $13 trillion dollars in public and private debt. This is ludicrous.

ACRES U.S.A. And of course this kind of debt load can't be paid and that's where the rule of the universe says it has to be paid. If the borrower doesn't pay, then the lender does and that's where your bankruptcy procedures come in, whatever country you're living in.

HUENEFELD. Well, this is what's happening with the FSLIC situation today: $38 billion were pumped into the savings and loans last year by the FSLIC, all money they didn't have. All they gave was paper notes to balance that account. It went over and above the limit that Congress gave them. Our records indicate that more banks and Savings and Loan's will go out of business in 1989 then have gone out of business from 1929 through 1988.

ACRES U.S.A. Whatever we say about bankruptcy, it really comes down to this, it's the system trying to straighten itself out, and the question is, *Who is going to pay?* It looks like the people who pay are the wrong ones. The ones that cause it all, they don't seem to end up paying?

HUENEFELD. That's correct. The American taxpayer is going to end up paying unless our political leaders decide to have the correct monetary policy. Then we could turn it around with earned income in the system. We have $4.2 trillion of gross national income in the United States. We're functioning at 50 percent of parity, half price. Fifty times fifty, price times production, equals income and 50 percent of price times 50 percent of your land and production because the conservation reserve set aside only gives you 25 percent income—and 25 percent income cannot purchase 50 percent production. Let me say it another way. If you get the true value based on the cost of production of what God gives you based on your standard of living, then you have prosperity.

ACRES U.S.A. You would generate the income by the act of production to, in turn, consume the production?

HUENEFELD. Absolutely. Mathematically, we have proved that statement you just made. If you create the earned income in the system with the correct monetary policy, you create so much wealth that you consume what you produce. Our facts show a one-to-one ratio in agriculture and labor. The lower the agricultural income the less money earned by working people. If the working people do not earn any money, they either starve to death or we put them on an entitlement program. The entitlement programs talk [take] about $500 billion a year, that's what it costs.

ACRES U.S.A. Entitlement is a nice polite word, isn't it, for *institutionalizing poverty?*

HUENEFELD. That's correct, lowering the standard of living of people by policy. That's what it does.

ACRES U.S.A. What do we do about it?

HUENEFELD. There's only one thing. You have to go back to the American system of economics by regulating the value of money, regulating the value of foreign money and fixing the standard of weights and measures. That is the only answer. Now if we did that we would double the gross income in the United States in 1 year.

ACRES U.S.A. You would double the earned income and you would probably lessen the amount of income that is being generated by plowing yourself deeper into the hole with debt?

HUENEFELD. No question about it. Then you would not need the $500 billion a year in the current Federal budget to subsidize the economy because 98 percent of those people would go back to work because they want to work, they want to have a decent living. The minimal salary today ought to be $40,000 a year. That's what a family needs to pay the house note, the car note, the telephone bill, the grocery bill, put a little money in the bank for savings for the wife to stay home and take care of the children, teach them music, teach them their homework, work with them, give them love and tender care and have that home ready for that husband when he comes home from work.

ACRES U.S.A. Yes, but we're not going to do that because even the average businessman would say, *My God, that would break me in 24 hours.*

HUENEFELD. Well, the average businessman has his head in the sand, and he's been propagandized by the philosophy of Adam Smith and the law of supply and demand and the invisible hand of the market.

ACRES U.S.A. Which brings us back to the end of World War II. We are spending 25 cents of the income dollar as taxes and 25 cents to feed the family and a few other things, but now we are spending 45 cents out of the dollar for taxes, so even though the food is cheaper, it's really higher.

HUENEFELD. Of course. Because the taxes are subsidizing the economy. We are subsidizing the economy to the tune of $600 billion a year out of a $1 trillion budget. That would not be necessary if we had the correct monetary policy and the true value of the physical economy in the marketplace. Every nation in the history of man for 2,500 years—when they had the correct monetary policy—had prosperity. The Roman Empire collapsed because of the same policies that are being used today. China at one time was prosperous and had a high standard of living. Today they are debt bonded. I could go on to every civilization known to man where they had policies of free trade. It was buy cheap, sell dear, cheat, steal, and debt bondage.

ACRES U.S.A. The lenders like to put that debt into these countries even though it can't be collected. For instance, South America has not paid off any of these international bonds since the year 1800, but the lenders keep right on pouring debt into South America.

HUENEFELD. I was just with some colleagues who had been to Ethiopia. There is land in Ethiopia on which you can plant milo and in 6 weeks time it will produce and be harvested. But because of the policy of the international terrorists and the grain cartels and the multinational corporations that keep those countries in debt bondage because of the free trade policy, these people move around and don't stay in one place 6 weeks to produce anything. Consequently they starve to death. Now until we get some leaders who have the courage to understand what the Pope was saying in his report about human bondage and debt bondage, that one is just as bad as the other. We have people who understand that free trade is evil, is genocide, and that it is a football game with no rules and regulations. Private enterprise—the American system—is a football game with rules and regulations.

ACRES U.S.A. In other words, all this talk about trading partners and trading nations—there really isn't any profit in an economic sense in this international trade, is there? There's profit for a businessman, but there is no profit for the nations involved unless there's some stealing going on.

HUENEFELD. You have to understand the term, *equity of trade.* What it says is that when you regulate the value of foreign money and fix the standards of weights and measures, if you're Peru and I'm the United States, I sell my cotton to you, Peru, based on my cost of production and a reasonable return. That's pure arithmetic. We have zero gain between nations based on fair weights and measures, that's called *equity of trade.* At the end of the year, you've got a debit or a credit. What have I just done? I do what God does—spring, summer, winter, and fall. There are a lot of people in this country who understand what you and I talk about.

ACRES U.S.A. We as a nation want to cherish the idea that Wendell Willkie talked about, *one world,* but the fact of the matter is the disparities are simply too great to make this possible, and so we are opting for the lowest common denominator for all of the world, and that means that the Third World simply is going to stay poor and we're going to join them as soon as the bankruptcy procedure continues to take over.

HUENEFELD. Just come and see these people whose standard of living is being lowered that I'm handling in bankruptcy. I'll take you down to the south side of Monroe where a black man walked up to my car, knocked on the window and said, *Do you have $10?* I said, *What do you want with $10?* He said, *My wife is over there, she'll do whatever you want to. I just lost my job at Manville in West Monroe when they reorganized under chapter 11 and they fired me and I was making $10 an hour and they hired somebody in my place for $5 an hour. I lost my home, car, job and I can't find another job. I'm trying to get money to feed my children, and I'm willing to sell my wife.*

ACRES U.S.A. That's a sad note to end on. We're going to have to ask people to take what we've recorded here, and think about it.

PREPARED STATEMENT OF SARAH VOGEL, COMMISSIONER OF AGRICULTURE, STATE OF NORTH DAKOTA, BISMARCK, ND

Senator Conrad, thank you for this opportunity to place on the record views and experiences of North Dakotans regarding the status of the implementation of the Agricultural Credit Act of 1987. As you well know, this act is extremely important to American agriculture and its proper and equitable implementation is vital to restoring the balance of the agricultural economy. Commissioner Vogel is in Calgary, Alberta, at an international meeting on the Free Trade Agreement relative to grains and oilseeds and cannot be here today.

I would like to share with you today perceptions about the implementation of the act by the Farmers Home Administration (FmHA) and Farm Credit Services (FCS). The basis for much of this testimony has been the experiences of the States Agricultural Mediation Service and constituents across the State.

FMHA

1. *Lack of Staff.*—One of the primary impediments to FmHA adequately implementing the Agricultural Credit Act of 1987 is that FmHA is tremendously understaffed. Although Congress set a limit of 6 months for FmHA to issue final regulations on restructuring, FmHA failed to issue those regulations until November. Thus, the "packets" had to be sent out at the same time as year-end analysis, emergency loans and operating loans were being dealt with. In North Dakota alone, this meant 2,700 packets were mailed virtually at once. Let me state further that the packets were intimidating, confusing, and used in a manner that induced chaos. Without the books and videos produced by the Farmers' Legal Action Group of St. Paul, the confusion would have been much worse.

The shortage of staff naturally leads to mistakes in paperwork and restructure packets. It also slows processing of loans when time is often of the essence. This problem has not eased recently, and I see no significant decrease in the workload in the coming 6 months.

2. *Inconsistency.*—County Supervisors, upon whom many restructure decisions rest, vary greatly in interpreting regulations, especially regarding the use of 5-year histories and the correlation with projected yields and expenses.

3. *Projections.*—Five-year histories are used as the basis for developing new Farm Plans for FmHA borrowers. FmHA should change the regulation that requires a farmer to use county average yields on his or her 5-year history when a particular year has been declared a disaster. This artificially raises a farmers' average yield. Using a Federal Crop Insurance Corporation (FCIC) insurability yield is much more

logical in this case, because that is all the farmer will receive in disaster years, provided the farmer purchases FCI. North Dakota FmHA offices often were not even using this regulation earlier this year. Instead, they were determining 5-year histories with different calculations chosen by county offices. In addition, projections used by FmHA often do not reflect reality. Instead of using past history to project a farmer's earnings and expenses, FmHA should use the projections of commodity prices and farm- related expenses from the list FmHA produces every fall.

4. *Manipulating Numbers Without Authority.*—Many County Supervisors have changed income and expense figures on the farmer's Farm and Home Plan *without* the farmer's knowledge or consent. Not only is this against regulations, but many times the changes were incorrect. Additionally, many County Supervisors would not allow the farmer to make changes on the Farm and Home plan if the farmer or the County Supervisor made a mistake. This is unconscionable and must not be allowed to continue.

5. *Mediation.*—The formal mediation process is in its infancy in North Dakota regarding FmHA. Initial reports we have received generally indicate that mediation works well and is being favorably received. However, some major obstacles came to my attention last week. As explained to us by officials from the State FmHA office, these obstacles arise from regulations written by the national FmHA office. Many of these regulations suggest that FmHA should only mediate if other creditors are willing to mediate their debt as well (1951.909(h)(1); 1951.909(e)(5)(iv); among others). However, other regulations seem to allow more latitude for FmHA to mediate issues other than debt levels of other creditors (1951.912(a)(1)). Regulation 1951.912(a)(1) reads as follows:

"(a) *States With a USDA Certified Mediation Program.* The FmHA is required to participate in USDA Certified State Mediation Programs. The purpose of mediation is to participate with farm borrowers, and their creditors, in an effort to resolve issues necessary to overcome the borrower's financial difficulties.

"(1) FmHA shall participate in a USDA certified mediation Program (sic) under the same terms and conditions as other creditors . . . "(.) (1951.912(a)(1)

We see two specific problems in this area:

(a) *FmHA wants to mediate only other creditors' debts.* In other words, FmHA wants other creditors at the mediation table to make concessions without changing any other components of the borrower's Farm Plan.

We think *any* issue relating to the farmer's financial condition should be discussed during mediation and decisions should be reached during mediation by considering all of the issues and possible solutions. *All* parties to mediation, including the borrower, FmHA and other creditors, must be prepared to explore *any* and *all* possible solutions to the problem. These possible solutions should include, but not be limited to:

- Deeding back high-priced land;
- Dropping high cash-rent land;
- Changing enterprises (farm operations);
- Off-farm income; and
- Other options.

Any changes agreed to during this process will require new or revised Farm Plans. Supervisors must be made aware that they should willingly entertain changes to the Farm Plan and rerun the DALR$ program to determine if the debt can be restructured after changes to the Farm Plan are made during mediation. The mediation process must allow this to happen.

(b) *FmHA does not want to mediate if other creditors are not "at the table."* For example, the argument FmHA is using is that mediation should only be used to restructure other creditors' debts. Further, FmHA suggests that later informal meetings with the County Supervisor and appeal hearings could address FmHA concerns.

The problem with this approach is that only specific issues can be addressed in appeal hearings.

6. *Nonacceptance of FmHA Offers to Restructure.*—An FmHA borrower has no idea what will happen if he or she does not accept an FmHA Offer to Restructure. Thus far, County Supervisors have handled this situation in two different manners. One is to send the borrower "attachments 5 and 6," which afford the borrower some rights, including appeal. The other is to send the borrower "attachments 9 and 10," which offer the borrower virtually no relief. Because FmHA has not denied restructure, the borrower cannot appeal incorrect information used by the County Supervisor in reaching FmHA's decision when attachments 9 and 10 are sent to the borrower. Again, the borrower has no idea what his or her rights are if the County Supervisor changed numbers on the Farm and Home Plan.

Which "attachments" should be sent to the borrower? FmHA has given two completely different answers on this question.

7. *FmHA Inventory Property.*—The process of determining whether Fish and Wildlife Easements should be taken on FmHA inventory land. This has prevented many farmers who plan to leaseback or buyback FmHA inventory land from enrolling in the Farm Program for 1989. Commissioner Vogel has requested that the Agricultural Stabilization and Conservation Service extend the enrollment deadline for these farmers; Commissioner Vogel has not received a response from the ASCS.

All things considered, FmHA has done a relatively good job under very difficult circumstances implementing the Agricultural Credit Act of 1987. Most problems could be solved through more and better trained staff at all levels.

FCS

1. *Inconsistency.*—Policies and attitudes vary not only from district to district, but from service center to service center on almost every issue.

2. *Right of First Refusal.*—The original owner's Right of First Refusal varies from a 30-day notice at a high appraised value, to a 30-day notice with an "earnest money" requirement, to a public auction without any 30-day notice. Some former owners are offered contracts for deed with 20 percent, 30 percent, or 40 percent downpayments, but many farmers do not know of this possible option.

FCS should afford former owners consistent Right of First Refusal, and should follow the act regarding policy on the Right of First Refusal.

3. *Unavailability of Information.*—Many borrowers are denied access to information such as appraisals, cost of restructure/foreclosure calculations, or an accounting of interest accrual during a delinquency or redemption period.

Without this information, borrowers are unable to determine if FCS erred in its determinations, or if there are alternative means of settling the debt.

4. *FCS Penalty Interest.*—FmHA allows only 6 percent interest during a redemption period, but FCS has only recently acknowledged this. Many times FCS method of calculating penalty interest on foreclosed loans eats up FmHA's equity at the expense of all taxpayers. FmHA does not redeem property if their equity is less than 20 percent. Therefore, many times, FCS obtains land at 80 percent of appraised value and resells it at a nice profit. In these cases, FmHA requires the borrowers, if borrower wishes to debt settle, to offer at least the remaining amount of equity that FmHA has in the land.

5. *Artificial Land Values.*—FCS artificially inflates land values to make their loan portfolio look good. FCS should not only use comparable sales in appraising land. With target prices dropping annually, the productive value of land is obviously not increasing. We have seen wealthy investors and speculators pay high prices for land when those prices have little to do with productive value. When FCS values other land at these prices, and lends money accordingly, they are being very shortsighted. We may very well again see the same land-value collapse we just went through and FCS will need another "Bailout." We have seen cases in which new FCS borrowers bid almost double the appraised value on some land. Not only did FCS finance these purchases, but raised the value on the rest of the borrowers' land. We do not deny FCS the right to sell to the highest bidder, but FCS should not use these sales to contribute to another inflationary cycle.

6. *Demonstration Project.*—At this time, we are not aware of any FCS inventory property sold using the FCS/FmHA Demonstration Project as provided by the Agricultural Credit Act of 1987. We believe this to be unfortunate and probably unnecessary. Maybe FCS has some answers as to why this tool is not being used.

7. *FmHA Guaranteed Loans.*—FCS is charging "High Risk" interest rates on FmHA guaranteed loans although FmHA says this should not be happening. FmHA regulations require "normal" interest rates to be charged on these loans (FmHA AN. 1901; 1980). FCS' rates vary by service center and are adjusted periodically, based on the cost of credit. The difference between "High Risk" and "Normal" rates usually ranges between 1 percent and 1.5 percent, according to FCS.

8. *FCS Not Using Bailout to Aid Borrowers.*—The Federal "bailout" of the FCA by Congress via the act has not translated into lower FCS interest rates for borrowers. In fact, $650 million in Federal money went to FCS in St. Paul and they raised their interest rates by 1 percent within 2 weeks of receiving that money. Yesterday, FCS in Mandan said Federal land bank loan rates vary from 11.25 percent to 13.25 percent.

FCS should not be the only entity to benefit from the Federal funds resulting from the Agricultural Credit Act of 1987. The benefits should be passed onto borrowers in some tangible manner.

MEDIATION

Thus far, both FmHA and FCS have cooperated well with the North Dakota Agricultural Mediation Service, as provided by the Agricultural Credit Act of 1987. The major problem with mediation in North Dakota has been the intensity of the workload. Currently, the Ag Mediation Service is working with 2,260 clients—this figure includes clients in the informal mediation process and the formal mediation process. The number of clients has increased dramatically of late. For example, in the 8 months between June 1988 and February 1989 our workload jumped 50 percent from 1,153 clients to 1,803. Compare those figures to June 30, 1985, when we were serving 683 clients and you will get an idea of how the need for mediation and negotiation has increased in North Dakota in only 3½ years.

Of our current requests by creditors for formal mediation, 661 were received from FmHA, the bulk of which came in mid-February and March. FCS has notified 162 borrowers of the availability of formal mediation since April 5 of this year. (Under FCS policy, FCS notifies their borrowers of the availability of formal mediation, then it is up to the borrower to request formal mediation.) Of these requests by FmHA and notices from FCS, 429 borrowers have agreed to mediation; 130 have not agreed to participate in mediation; we have not received responses from 261.

This increased workload has forced the Agricultural Mediation Service to contract with 13 mediators; open 3 field offices to process requests; hire 3 temporary clerical personnel in the State office; and hire 3 more temporary clerical personnel in the field offices. Obviously, expenses are running high, which brings up another point I would like to express at this hearing.

Currently, the Federal budget contains $3 million for cost-share funding for State mediation programs, which may not even be adequate for the current need. Furthermore, the President has recommended funding for the program of $2 million for the next fiscal year. According to Senator Quentin Burdick's office, the law authorizes $7.5 million for the funding each fiscal year.

Though we understand Federal budget constraints, reducing this appropriation will be counterproductive, to say the least. Based on current use, we can expect the demand for mediation assistance to increase next year. If Federal cost-share funding is reduced, the availability and viability of State mediation services will decrease proportionately.

CONCLUSION

As a final note, I would like to state that FmHA's policy of eliminating direct loans and simply providing guaranteed loans in the future is misguided and unrealistic. There is a pronounced need for direct FmHA loans across the country. These direct loans should be targeted to family-sized operations and should be closely supervised by the county office personnel. Guaranteed loans serve the purposes of lenders and have no substantial, long-term effect on borrowers' cash-flow, because most guarantees—as far as the borrower is concerned—simply provide a 3-year interest buy-down with a return to commercial lending rates after the 3-year period.

We are dealing with a number of clients who have FmHA guaranteed loans which are delinquent. In many of these cases, the guaranteed loans are being liquidated. I expect this problem to worsen as time goes on. It would be interesting to see a study comparing the loss ratio on guaranteed versus direct loans from FmHA.

In summary, we have found that FmHA is attempting to meet the requirements of the Agricultural Credit Act of 1987 in North Dakota to the best of its ability, with a few exceptions which have been noted. FCS, on the other hand, has been very cooperative regarding mediation, but needs to clarify its policies regarding the act, and implement the rights afforded to borrowers by the act in a more consistent and equitable manner.

Thank you, Senator Conrad, for this opportunity to address the implementation of the Agricultural Credit Act of 1987. We appreciate your serious consideration of the testimony provided today and at other hearings, and hope that you will address the questions raised at these hearings swiftly and justly.

[Letters pertaining to testimony follow:]

Department of Agriculture,
State of North Dakota, State Capitol,
Bismarck, ND, May 1, 1989.

Senator Kent Conrad,
361 Dirksen Office Building, Washington, DC.

Dear Kent: Thank you for holding the Senate Subcommittee on Agricultural Credit hearing here in Bismarck last week. We truly appreciate your efforts and concerns on behalf of agriculture in North Dakota, as well as in the rest of the country.

Commissioner Vogel appreciated the opportunity to have her testimony placed in the record. However, there were a few errors in that testimony regarding Farm Credit Services, which I should have caught. I am sending this letter as a means of correcting those mistakes, and having those corrections entered in the record.

Item 8, under the FCS heading on the fifth page[1] of the testimony contains the errors to which I refer. This item stated:

> 8. *FCS Not Using Bailout to Aid Borrowers.*—The Federal "bailout" of the FCS by Congress via the act has not translated into lower FCS interest rates for borrowers. In fact, $650 million in Federal money went to FCS in St. Paul and they raised their interest rates by 1 percent within 2 weeks of receiving that money. . . . (.)

As I am sure you are well aware, the St. Paul FCS received $133 million, *not* $650 million as stated. In addition, the statement that FCS raised their interest rates by 1 percent within 2 weeks of receiving the assistance is also incorrect.

The correct chronology is as follows: St. Paul learned on October 7, 1988, that they would receive the $133 million they had requested from the FAB. Bonds were issued to generate that money from the end of November through late January or early February. Interest rate increases were as follows:

October 1, 1988—rates on first tier loans increased by 50 points; by 40 points on second tier loans; and 25 points on third tier loans;

January 1, 1989—FCS raised the rates on all three tiers by 50 points; and

May 1, 1989—FCS raised the rates on all three tiers by 50 points.

Though the dollar amount is considerably less, and the timeframe listed is longer than stated in the testimony, the basic premise of the testimony still holds true.

Commissioner Vogel questions why FCS raised rates on October 1, 1988, after they applied for assistance. In addition, Commissioner Vogel questions the validity of FCS' increasing the rates by 1 percent between January and May 1989.

As you stated several times during the hearing, the purpose for the assistance money was to relieve interest rates for borrowers. It is clear that FCS is not adhering to the wishes of Congress regarding the assistance money.

Again, Kent, thank you for the opportunity to provide testimony at the hearing, as well as for all your efforts on behalf of agriculture.

Sincerely,

Ellen Crawford,
Public Information Specialist.

Department of Agriculture,
State of North Dakota, State Capitol,
Bismarck, ND, June 16, 1989.

The Honorable Kent Conrad,
U.S. Senator, 361 Dirksen Office Building, Washington, DC.

Dear Kent: The intent of this letter is to address Farm Credit Service's letter to you dated May 30, which responded to issues raised in my testimony before the Subcommittee on Agricultural Credit hearing on April 26, 1989 in Bismarck.

Though I appreciate FCS' efforts to address the concerns I raised in my testimony before your committee on April 26, after reading their letter, I am not convinced that they addressed them accurately. I would like to take this opportunity to again clarify my position on the matters of FCS policy inconsistency in North Dakota; the unavailability of information to FCS borrowers; and the "artificial" inflation of land values.

First, the Department of Agriculture, specifically the Agricultural Mediation Service, has received complaints from FCS borrowers about the inconsistency of

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[1] See printed page 284 for the referred to prepared testimony.

FCS' policies, especially policies regarding the borrowers' Right of First Refusal. I do not dispute FCS' right to decide whether or not to provide financing to former owners. I do, however, feel that *all* former owners should be notified of their rights in a consistent manner, and the FCS policy on this issue should be consistent throughout the State. To ensure that this happens, it may be helpful if the four FCS institutions in North Dakota provide you or us or both with copies of their Right of First Refusal policies.

Second, we have received complaints that FCS will not provide to borrowers a copy of the appraisal used to determine the costs of restructure versus foreclosure. Section 104 of the 1987 Agricultural Credit Act amended section 4.13A of 12 U.S.C. 2200, Access to documents and information, to read "and copies of each appraisal of the borrower's assets made or used by the qualified lender." If it is FCS policy to only provide information signed by the borrower, perhaps this policy should be reviewed and changed in the light of this amendment.

Third, as I said in my testimony, the Department of Agriculture does not dispute that FCS has the right to sell inventory land to the highest bidder. I did state, however, that the productive value of land has not increased in recent years. I believe that FCS' use of only comparable sales in appraising land values may artificially raise those land prices. We definitely agree with FCS' position that "(a)rtificially inflating or deflating land prices is detrimental to lenders, borrowers, sellers and buyers," as stated in FCS' letter to you dated May 8, 1989. I believe FCS should use a combination of the productive value of the land coupled with comparable sales in the appraisal process in order to avoid artificially inflating land values.

The Department of Agriculture and I regret any misunderstanding on FCS' part of my testimony, and hope that this letter clarifies the issues. I also hope these clarifications prompt a more accurate response from FCS to the concerns raised in my testimony.

Thank you, Kent, for your constant and consistent commitment to the problems facing agricultural credit. We truly appreciate your efforts.

Sincerely,

SARAH VOGEL,
Commissioner.

PREPARED STATEMENT OF DWIGHT KIEFERT, FARMER, VALLEY CITY, ND

My name is Dwight Kiefert, I farm in Barnes County near Valley City, ND. In April of 1987 Perry Laub (FmHA Supervisor), told us we had to show payability on our loans 5 years into the future with higher expenses and lower income. Unable to do this he told us we could sell our dairy herd and equipment and FmHA would write-off the loan.

In addition to this he said we could deed back our farm and he would sell it back to us at appraised value at 5 percent interest. We asked him several times to make certain there were no misunderstandings because the cattle market was distressed and most of our cattle were registered. He claimed he couldn't put the agreement in writing because of Government regulations. When I delivered the check for the cattle to Mr. Laub he asked me what I was going to do with the balance of my loan. He claimed we all misunderstood what he had told us. When he wouldn't put the agreement in writing I took along a witness for security. I didn't think he would lie to us with a witness there but I was wrong. I believe he wanted to trick us into a bankruptcy situation. My milking equipment, which I had over $30,000 invested, sold for $2,300. My cows, we had an average of $1,500 invested, sold for around $500 apiece. Now my family and I try to hold onto our farm and service the large remaining debt without a milk check. If we had our cows and equipment we could have benefited now from the write-down program. Why did he do this to us?

[Exhibits 1A and 1B and attachments follow:]

[Exhibit 1A]

DWIGHT KIEFERT,
Valley City, ND, March 15, 1989.

PERRY LAUB,
County Supervisor, FmHA, 202 Central South, Valley City, ND.

DEAR MR. LAUB: I am writing to apply for the leaseback/buyback program [7 CFR 1951.911(a)]. Please immediately send all the application forms and tell me exactly what information you need from me to process this action. I am requesting this in accordance to 1951.911(a)(5)(i). I am also requesting the eligible rates and terms in my situation as described in buyback of property as a credit sale as outlined in 1951.911(a)(5)(i)(B), including an outline of subpart A of part 1943 of this chapter.

I am also requesting an outline of an acceptable plan in my situation as outlined in 1951.911(a)(5)(ii), including a detailed outline of 1951.911(a)(5)(ii)(B), that would be acceptable to your office in my situation. I would like an outline of section 1951.907(g). Also I would like to know the capitalization value of my homestead and surrounding farmland as described in FmHA Instruction 1951-S, exhibit A to subpart S, attachment 1, page 7.

Without this information I find myself at a great disadvantage at being able to determine whether or not to appeal the present standing decisions of your office. Until receiving this information and having adequate time for examination, I am requesting a freeze of the time limit of 45 days.

Thank you for your cooperation!

Sincerely,

DWIGHT KIEFERT.

[Exhibit 1B]

DWIGHT KIEFERT,
Valley City, ND, March 28, 1989.

PERRY LAUB,
County Supervisor, FmHA, 202 Central South, Valley City, ND.

DEAR MR. LAUB: I am again writing in request of the information outlined in our first correspondence. You will find a copy enclosed. If we do not receive a response to our request, our only assumption can be you have no intention of supplying the information needed to make any decisions regarding our well-being in the matters at hand.

We would appreciate the information in the next 5 days. After this time we feel we will have no choice but to seek legal counsel and begin legal litigation.

If possible we would also request at this time the name of counsel representing your office so correspondence between our attorneys can be established. The firm we intend to use is listed below.

Sincerely,

DWIGHT KIEFERT.

SERKLNAD, LUNDBERG, ERICKSON,
10 Roberts Street,
P.O. Box 6017,
Fargo, ND 58108-6017.

DWIGHT KIEFERT,
Valley City, ND, April 14, 1989.

PERRY LAUB,
County Supervisor, FmHA, 202 Central South, Valley City, ND.

DEAR MR. LAUB: After careful examination of the farm appraisal received upon request at our 4-10-89 meeting, I wish to protest or appeal (part 5) the amount you lead us to believe to be the capitalization value.

Under FmHA Instruction 1951.911(a)(8)(ii) farm property will not be subdivided for lease or purchase for such persons or entity. Under this provision, the homestead must be considered as a farm unit with the cropland.

Furthermore, Capitalization Value of a farm is defined as (the price based on the average annual income that is reasonably expected to be generated from [FARMING THE PROPERTY] as a unit). This is clearly defined. Your determination is based on renting the property to an existing farm and renting the homestead as rural housing. You are clearly in direct disregard for Federal law. I am very interested in receiving a written explanation for these actions.

Also please examine enclosed outline of our 4-10-89 meeting, sign and return. Unless contested in the next 5 days it will be assumed correct. Due to claims of Gross misunderstandings in previous dealings with your office I am requesting documentation of any and all communications between your office and myself.

Sincerely,

DWIGHT KIEFERT.

[Enclosed outline of April 10, 1989, meeting follows:]

A meeting in your office took place 4-10-89 between (Dwight Kiefert) borrower, (Curt Olsen) counselor, and yourself (Perry Laub), to inquire as to why there has been no response to (Kiefert's) written requests for information regarding the buyback program.

You gave consent to tape-record the meeting.

When asked if you feel I have operated in "good faith" your reply was you haven't made that determination yet.

You claimed you had no remembrance or documentation of any meeting informing me about the buyback program in the spring of 1987 prior to the sale of my dairy herd.

You claimed you had no guidelines of a buyback in the spring of 1987.

In our meeting with you 3-26-87, your records indicate the problem is taken care of regarding outstanding debts, but our inability to show payability in 1991-92 is the deciding factor.

You claimed there was no leaseback-buyback program in 1985.

When asked why you didn't reply to my requests for information you replied "basically" that you didn't have time for my requests.

At this meeting I requested to represent my application at the committee's ruling on my file.

Date

PERRY LAUB.

DWIGHT KIEFERT,
Valley City, ND, April 24, 1989.

PERRY LAUB,
County Supervisor, FmHA, 202 Central South, Valley City, ND.

DEAR MR. LAUB: I would like to be considered for the buyback program on eligible rates and terms as a credit sale.

As previously discussed at our 4/10/88 meeting, I am not depending on nonfarm income for payability of my Farm Plan.

I would like to present my farm program to whoever decides eligibility for the buyback program. Included will be my equipment agreement and a revised Farm Plan. I feel the Plan in my file with the corrections is difficult to understand. If these terms are not acceptable please let me know in writing and I will provide the agreement and Plan in advance.

Sincerely,

DWIGHT KIEFERT.

PREPARED STATEMENT OF DAKOTA RESOURCE COUNCIL, DICKINSON, ND

First of all, we would like to thank Senator Conrad and other members of the Senate Agriculture Committee for the opportunity to express our concerns with the implementation of the Agricultural Credit Act of 1987, and the added bonus of having the hearings in North Dakota.

Secondly, our concerns will be presented as the problem first, and then a possible solution. We will start with FCA/FCS and then address FmHA.

I. FARM CREDIT ADMINISTRATION/SERVICES

(a) Although the final regulations issued by the FCA are identical to the regulations expressed in the act, there still is:

(1) Inconsistency among the individual FCA districts in regards to loan processing and restructuring;

(2) Lack of information being given out to the borrower about restructuring and borrowers rights; and

(3) The preliminary plan, submitted by the borrower, is not able to be modified, and we hear that restructuring proposals are being denied, based on that preliminary plan.

We feel that the Agricultural Credit Act should be changed to:

(1) Include clear-cut standards and procedures for the FCA in order for restructuring to occur on an equal basis;

(2) Full disclosures of lender's calculations and formulas used to determine cost of foreclosure versus cost of restructuring; and

(3) The preliminary plan should not be held as the final plan. It should be able to be revised as needed, with the borrower's aid and knowledge.

(b) There continues to be problems in the credit review process after a borrower's restructuring proposal is denied.

(1) When a borrower prepares for the review process, it is important that he/she knows why the restructuring packet was denied. However, many people that have called our office have expressed that this is not what happens. Often the reasons for denial are not known to the borrower until the review meeting.

(2) While, according to provisions in the Agricultural Credit Act, a borrower may "submit any documents or other evidence to support the information contained in the unsuccessful loan or restructuring application," the prefatory comments to the final regs do not include the submission of any type of counterproposal.

(3) Independent appraisals do not, after scratching the surface, fit the description of "independent." When all a borrower has to choose from is a list of three appraisers, who, we have found out, are under contract by either FmHA, FCS, or the FCS lender, there is no really independent, unbiased appraiser for the borrower.

Our recommendations for change include:

(1) Amend the Agricultural Credit Act to require that all reasons for denials and the basis on which those denials were granted, be fully disclosed to the borrower, and in advance of the Credit Review Committee;

(2) Amend the act to allow the Credit Review Committee to both propose and accept counterproposals; and

(3) Broaden the responsibilities of both FCA and FmHA to show that the borrower has a real choice in choosing an independent appraiser. Let the borrower choose an appraiser known to him/her, not just from a list of three.

(c) What actually does "least cost" mean to FCA? Under the Agricultural Credit Act, FCS lenders are to determine their cost of restructuring a loan versus their cost of foreclosure on the loan. Least cost is just simply using the approach that will save the most money. However, borrowers who have spoken to staff have expressed that:

(1) The calculations used by the lenders are unrealistic and unmanageable.

(2) When FCS offers a buyout figure, it is reported by borrowers that staff have talked to, that the figure actually represents 70–80 percent of the appraised value. The bank or other lender will only loan up to 50 percent of the appraised value. This leaves the borrower with a deficit. For example, a borrower who is offered a buyout figure of $120,000 can receive, under ideal conditions, $60,000 from their lender. Where do they receive the additional $60,000? If they had it, they could have been making payments and could have avoided foreclosure or restructuring

(3) The use of inflated property value has made it much easier for FCS to foreclose on borrowers. We feel that the property, if realistically assessed, would reflect the true condition of today's farmland and aid in the restructuring process, rather than complicate the procedures and force many people out of farming.

We ask that the act be amended to require FCS lenders to:

(1) Exhaust every option available under restructuring in order to avoid foreclosure. This includes, but is not limited to, partial or complete deferrals, amortization, and the inclusion of the availability of restructuring to borrowers who are undergoing or have had their debt discharged in a bankruptcy.

(2) Change the procedures for determination of net recovery buyout. If the borrower cannot cash-flow at 70–80 percent of the appraised value, then maybe something is wrong with either the appraisal figures or the percentage. If a borrower can cash-flow at 50 percent, or 60 percent, then why isn't that figure acceptable? This is supposed to be in the borrower's best interest, not a means to displace him/her from the farm.

(3) The "armchair" or "roadside" appraisals must be eliminated. While we can appreciate the workload of the appraiser, we also know that an appraisal is not cheap. Someone is not getting their moneys worth from such an appraisal, and the borrower stands to lose a great deal from this approach.

(d) We have problems with the handling of inventory property.

(1) More than once FCS has sold land at sheriff's sales or auctions without granting the borrower his repurchasing rights. What we see happening with "the right of first refusal" is a twisting of the law to accommodate the lender. "The right of first refusal" should actually become "the right of last refusal" as the lender will offer the property back to the borrower at an unreachable price, often with inflated land values, and the borrower cannot make that deal. The lender then proceeds to other borrowers, making them a "sweeter" deal, lowering values, giving incentives and

treating the next person very well. If the borrower were to have "right of last refusal" we may see this practice stopped. We look at section 103(d) and section 108 of the Agricultural Credit Act and see that the two provisions, which should be read as cumulative obligations on the part of FCS to the borrower, as often read as alternate approaches to the handling of property. In section 103(d) the lender is required to disclose the minimum bid and terms with conditions of sale to the former owner, if the property is sold via public bid or auction. Section 108(b) states that the FCS lender is required, within 15 days after making the initial decision to sell inventory property, to notify the former owner so that he/she may repurchase the property at its appraised fair market value. FCS contends that they do not, once the property is on bids or auction, have to consider the former owner either as a borrower or a buyer of the property at what that person believes to be a fair market price of the property.

We ask that the act be amended in the following ways:

(1) Sections 103(d) and 108(b) should clearly indicate, to remove all doubt, that these are cumulative, not alternative requirements.

(2) FCS should be required to release all the appraisals to the former owner.

(e) Borrowers' rights appear to be ignored by the FCA and FCS. Borrowers are told that they are not privy to their own files or documents. Figures used in restructuring are not often available to the borrower, and he/she does not know what to expect in the restructuring process until he/she gets to the meeting with FCS.

We ask that this be changed and to have the borrower's file open to him/her. We also ask that there be some recourse for action that the borrower may take when there are allegations made about violations of rights, and that the borrower be protected from any actions against him/her in that process.

(f) The last concern we will address regarding FCS is the apparent determination by the courts that the borrower has "no right" to sue FCS. Since when does a citizen lose protection under the law and the right to legal redress? Congress refused to include language in the Agricultural Credit Act that would create the expressed, private right of action. Now we see courts decide on the "intent of Congress" rather than base a decision on what is specific and written in black and white.

We strongly urge Congress to amend the Agricultural Credit Act to include an express, private right of action to any borrower or former borrower who is denied protection and a system of correction. This will relieve stress at many levels from the borrower to the courts. Litigation is not only expensive, but time-consuming and emotionally draining. The times and energies spent in litigation could be spent on the farm, rebuilding the present for the future.

We have one last thought on FCA/FCS. What did they use the $4 billion bailout for? Those funds were supposed to be used to help farmers/ranchers/borrowers of FCA/FCS. A FCS borrower from Arnegard, ND has stated that since the Federal bailout of FCA, his interest rates went up 1¾ percent. He now pays 13 percent on his loan. The Federal bailout did not help him, instead he sees a progression of loan rate increases that will force him out of business. Did FCA/FCS use the funds to build up their own assets? Did they use the funds to enable them to foreclose on borrowers?

II. Farmers Home Administration

While DRC has presented comments before on FmHA through our members, the National Family Farm Coalition (of which we are a member coalition group), and our general concerns overall, we will not repeat as much as we will address the problems we have encountered since FmHA's sending out the delinquent notices.

We felt that the Agricultural Credit Act was a pretty good piece of legislation and we worked hard to get borrower's rights recognized and honored. We still feel that the Agricultural Credit Act brought new chances for survival and restructuring debt under Farmers Home Administration. The act, properly carried out, will enable a farmer/rancher to stay in business, if he/she so desires. However, we do have the following concerns and problems that we have encountered with the debt restructuring process, under FmHA.

(a) We have found that, on an average, county officials were not prepared for the rule changes. There was, and in some counties continues to be, violations of the law. Whether this is done because of ignorance, or blatant disregard of borrower's rights, it has to stop. For example, an assistant supervisor in Pierce County told a borrower that she was not eligible for a limited resource loan because, in his words, "limited resource loans are only for people with limited intelligence."

(b) There are reports from borrowers that FmHA in North Dakota will not allow a borrower to appeal the proposal given by FmHA. When a borrower returns the packet and receives a determination by FmHA with an offer, that borrower cannot appeal that decision. By law he/she can, but it is a North Dakota ruling from the State office that the borrower has to have foreclosure or liquidation proceedings started on him/her and then appeal that proceeding. Why is this necessary and only in North Dakota? Or this is more misinformation being handed down to County Supervisors, who in turn hand it down to the borrowers? We ask that North Dakota come in line with the Agricultural Credit Act of 1987 on the appeal process and the borrower's right to appeal any decision made by FmHA.

(c) It has also been brought to our attention that FmHA has been asking for additional security such as cattle, land, machinery, and whatever else is free and clear. This is in violation of the Agricultural Credit Act. This practice should be stopped. The FmHA county officials should be well aware of what is needed in the debt restructuring process and not ask for more security when it is time to sign the agreement papers.

(d) As with FCA/FCS we question the "armchair" or "roadside" appraisals. How can the future of a borrower be adequately based on a land appraisal that is poorly done, reflects inflated values and does not take in drought conditions, economic conditions, and resale value. We ask that the appraisals be done in detail and accurately reflect the true market value of the property.

(e) It has also been brought to our attention that FmHA will not guarantee a buyout. Bankers would be agreeable to writing loans if there was a guaranteed buyout from FmHA but since there is not, bankers are leery of writing loans to borrowers. This hinders the borrower's ability to restructure. We ask that FmHA guarantee the buyouts.

(f) We see problems with mediation. Borrowers thrown into mediation with FmHA are likened to a wheat crop facing locusts.

(1) Borrowers in mediation have discovered that previous appraisals, values, and determinations are not negotiable. They are as one borrower aptly said, "set in stone."

(2) Borrowers find that they must go through an appeals process if they object to the previous figures and thereby lose any benefits mediation might have given them.

(3) Also FmHA strongly objects to the borrower bringing a court reporter or tape recorder to the mediation session. Borrowers have expressed that this is a violation of their rights and an effort of FmHA to control their due process. Either this is due to current law or the implementation of the law by FmHA. We ask that there be strong legislation regarding mediation and exact wording as to what a true mediation service consists of and its duties to the borrower.

(g) We have heard of a denial based on a mental handicap. Investigation showed where this person was denied restructuring because of a psychiatric diagnosis that has been under medical control and supervision for the past 5 years. That person also has a guarantor of the estate and is part of a family operation. We feel that this should not happen and was a direct violation of 7 CFR section 1901.202, which states "it is illegal for FmHA to discriminate on the basis of . . . or mental handicap." This is currently under appeals.

(h) The FmHA County Supervisor seems to have his/her hands tied. Borrowers have stated that the Supervisor in their county has stated to them that he is limited in his authority and that while he would like to do a certain restructure, or negotiate points of concern, the State office has the final word. It would seem that the County Supervisor would know the borrower best. While putting more authority in the Supervisor's hands can be either beneficial or detrimental to the borrower, we would like to see this explored through Congress.

We have not touched on every point, but considering the length of this testimony and we feel that our major concerns have been addressed, we have the following closing remarks.

Dakota Resource Council would like to thank the Senate Ag Committee for this opportunity to present our concerns regarding Farm Credit Administration/Services, and Farmers Home Administration. It is our sincere desire that the comments are taken under advisement and utilized to the good of everyone's future in agriculture.

PREPARED STATEMENT OF THOMAS M. DISSELHORST, ATTORNEY, BISMARCK, ND

Senator Conrad, and other invited guests, thank you for allowing me, as a practicing farm law attorney and representative of Dakota Resource Council, to testify today concerning my experiences with the Agricultural Credit Act of 1987, hereinafter the act.

First, I would like to give some of my background as a farmer-rancher advocate. I am primarily an attorney who represents farmer/rancher defendants in legal actions, or those experiencing some difficulties with lenders, either private or government lenders. My efforts started in 1980, when I was approached by a young farmer from Valley City, who was having significant difficulty with Farmers Home Administration. Through that farmer, I met other farmer advocates, including Sarah Vogel. Later, as I was employed by Dakota Plains Legal Services at Ft. Yates, North Dakota, I also learned of many other attorneys who had committed themselves to working with farmers and ranchers throughout what has been known as the agricultural crisis, and attended training sessions conducted by persons such as Dale Reesman of Missouri, and Jim Massey of St. Paul, Minnesota. As a board member of Legal Assistance of North Dakota since 1979, I advocated establishing a Farm Law Project, which for 3 years has funded one attorney who assists other attorneys in North Dakota develop defenses to foreclosure actions, assists the effort to ensure that Farmers Home Administration and other lenders are abiding by Federal and State law, and provides much needed backup legal research in farm law matters.

Before stating my experiences and observations, I wish to commend the Farmers' Legal Action Group, or FLAG, of St. Paul, Minnesota, whose director is James Massey, for their excellent response to Senator Conrad's inquiry concerning their impressions of how the Agricultural Credit Act of 1987 as it applies to Farm Credit Systems is working and FLAG's suggestions for improvements in the act. Most of Mr. Massey and his staff's observations and comments are reflected in my experience. I would invite the Congress to consider Mr. Massey's comments very carefully in reviewing the act and potential amendments to it.

In the last 30 months, since approximately November, 1986, when the first of Farmers Home Administration regulations attempting to comply with *Coleman* v. *Block* (now *Coleman* v. *Lyng*, recently dismissed by the 8th Circuit Court of Appeals) were to go into effect, I have counseled approximately 20 farmers and ranchers at various stages of litigation who have had loans with Farm Credit Systems or Farmers Home Administration, or for whom such loans might be of assistance. I will first summarize my experiences with and observations of the implementation of the loan restructuring portions of the act by Farm Credit Systems, specifically the St. Paul District of Farm Credit Systems.

FARM CREDIT SYSTEMS

As the agricultural crisis of the early 1980's deepened in North Dakota, Farm Credit Systems (FCS), through its two principal lending arms, Production Credit Association (PCA) and Federal Land Bank (FLB), now Farm Credit Bank (FCB), along with other lenders, saw a substantial increase in judicial foreclosure actions, and distressed loans in general. Although policies such as forbearance and authority to restructure loans have been part of the regulations governing Farm Credit Systems for a number of years, and were reinforced as recently as 1986, prior to the passage of the Agricultural Credit Act of 1987. Farm Credit Systems reluctantly, if at all, allowed such provisions to be used to benefit the farmer. Several North Dakota Supreme Court cases have illustrated the inability or unwillingness of Farm Credit Systems to afford the borrower his rights under these regulations. See, *e.g.*, *Federal Land Bank of St. Paul* vs. *Overboe*, 404 N.W. 2d 445 (N.D. 1987) and *Federal Land Bank of St. Paul* vs. *Bosch*, Dec. 6, 1988, Sup. Ct. ~~Civil No.~~ 870342, (N.D.).

Thus, the farmer's choices were often limited to either giving up (deeding the land back to Farm Credit Systems) or employing some legal strategy, such as bankruptcy, to try to stave off what often was inevitable, once the farmer had a delinquency in his obligations to FCS, loss of the farm.

The Agricultural Credit Act of 1987 was announced as an alternative to the family farmer or rancher leaving the land or enduring fruitless and expensive years of litigation. This act supposedly would force the Farm Credit Systems member institutions and Farmers Home Administration to bargain with delinquent borrowers in good faith and analyze potential restructuring plans presented by such borrowers in a more objective manner.

The act was passed against a backdrop of steadily declining land values in much of North Dakota and elsewhere in the farm belt, a fact which supposedly would act in the farmer's favor when it came time to discuss potential restructuring plans, since much of the collateral pledged to FCS was land. Thus, the farmer whose land has gone down in value presumably could qualify for a write-down of his loan, if the value of the collateral had become less than the amount of the loan outstanding. As the value of the collateral dropped, farmers and ranchers hoped that the deferral and restructuring authority, mentioned above, would have been used more frequently. But this did not happen. In my experience, both prior to and after the Agricultural Credit Act of 1987, Farm Credit System institutions were almost never willing to write down their loans to reflect the decline in value of collateral or otherwise work with the borrower whose cash-flow was reduced in times of low prices.

It was also the hope of some farm advocates that FCS would consider all of the factors listed in section 4.14A(d)(1) of the act in its determination of whether or not to restructure a member's loan, not only whether the cost of foreclosure was greater than the costs of restructuring. Particularly, among some farm advocates, it was hoped that a more production oriented approach to repayability would be used. A production approach would look at relatively recent market prices and production costs of the commodities typically raised on the land used as collateral, and given what would be expected as typical management skills and family living costs, would determine what the farmer should have available for debt servicing. That amount, then would be used to determine the restructured value of the loan. Of course, multiple creditors might require some mediation; and, again, it was hoped that such mediation would be readily available as a part of the restructuring plan.

However, following implementation of the act, my experience with six different FCS borrowers and my understanding of a number of other cases left me with the impression that my optimism about the possibilities for restructuring FCS loans under the act was not well founded. Many of the points raised by Jim Massey of FLAG in his comments dated March 15, 1989, were experienced first-hand by my clients. Therefore, rather than reiterate the general points made by Jim Massey, I would like to provide examples of problems my clients encountered.

Perhaps the most basic question raised by my clients' experiences is "to whom does the act apply?" At least one client was still in the process of foreclosure on the effective date of the act and was not sent the Notice of Opportunity for Restructuring by Farm Credit Systems of St. Paul. The reasoning of FCS was that the borrower only had redemption rights to his property left; since a sheriff's sale had already been held, no restructuring was possible. I believe that such borrowers should have been notified pursuant to section 4.14A(b)(3) of the act, because the foreclosure action was still "continuing" during the redemption period.

Another problem arose for borrowers who were under the bankruptcy laws at the effective date of the act. Should the act interrupt the bankruptcy process, requiring the borrower to submit a restructuring plan or forfeit his rights under the act, or is the borrower's exclusive remedy under bankruptcy the submission of a bankruptcy plan of reorganization? In at least two cases, the letters sent to the borrower in bankruptcy were different than the letters sent to those borrowers not in bankruptcy, in that the letter to those in bankruptcy did not include the sentence stating that the borrower was required to respond within 48 days of the date of the letter. This suggested to me that if the borrower was dismissed from bankruptcy, he or she could apply to Farm Credit Systems under the act after the bankruptcy was dismissed, since all actions against the debtor are stayed pursuant to 11 U.S.C. 362.

Farm Credit System also interpreted the act's notice requirement in a peculiar way. Section 4.14(b)(2) states that at least 45 days before a foreclosure action is commenced, notice must be given to the borrower of his or her opportunity to present a restructuring plan to FCS. There is no specific time limit given for notice where the borrower was already in some stage of a judicial foreclosure. FCS interpreted the notice requirement of section 4.14(b)(2) to mean that the borrower had only 48 days from the date of the notice to submit a restructuring application, complete with a restructuring plan, even if the borrower was already in foreclosure. This needs to be clarified, along with the relationship of the act to farmers in bankruptcy. See, as an example, exhibit 1.

The notice received was grossly inadequate to allow farmers to determine the criteria upon which Farm Credit Systems would evaluate the potential for restructuring of borrowers' loans. The notice suggested that the borrower could request a meeting with FCS county personnel to obtain assistance in developing a restructuring plan. Such meetings did not normally involve providing those criteria as developed by FCS of St. Paul to the borrower, and were not constructive. Even at appeals hearings, the criteria used were not usually available to borrowers until the time of the hearing, unless the borrower had learned from someone else what the worksheets that contained the criteria were and had requested them in advance. At some hearings, copies of the worksheets used were not provided to the borrower, even when requested. See, as an example, exhibit 1.

Nor was this helped in any significant way by the enclosure of the policy of restructuring required to be developed by each district in the System and sent with the notice of opportunity for restructuring. Sections 4.14(g) and 4.14(b)(1) (A) and (B). The policy of the St. Paul District was simply an almost word-for-word recitation of the act! Instead of waiting to develop a coherent set of restructuring proposal review criteria, the St. Paul District started sending out notices as early as the first week in February, 1988. Nothing new was revealed in the policy enclosed, and certainly no policy was articulated in the policy statement that could be relied upon to make intelligent conclusions about the criteria that would be used to evaluate a restructuring proposal. This must be changed through amendment, so that the criteria of restructuring are clearly explained and presented to every borrower eligible for loan restructuring.

The criteria that were used by FCS to evaluate restructuring proposals were arbitrary and did not allow for a case-by-case analysis of many of the factors used in determining both the cost of foreclosure and the cost of restructuring. An example of the worksheets used in the St. Paul District to determine the cost of foreclosure and the cost of restructuring are attached as exhibits 2 and 3. In the St. Paul District, the determination as to whether or not to restructure was apparently based entirely on the information obtained by using the worksheets. In my opinion, this analysis was defective in a number of ways, which include the following problems for each worksheet:

FORECLOSURE COSTS WORKSHEET

1. *Terminology.*—What is meant by "MEMBER VIEW"?

What does "INVESTMENT" mean? It certainly is not the amount of funds originally loaned to the borrower.

2. *Determination of costs of foreclosure.*—The determination of costs of foreclosure uses an odd amalgam of real costs and arbitrary estimates of costs. The determination gives the actual real estate taxes that would be paid if the mortgage was foreclosed, but assesses disposition costs (which I assume are meant to be closing costs of selling the property) at 3 percent of the estimated value of the property and legal costs at 1 percent of the estimated value of the property. A loan eligible for restructuring under the act might be in various stages of foreclosure. Legal and closing costs should reflect the values of such costs as are to be expected in a foreclosure of the real property securing the loan, taking into account such things as the legal costs of the foreclosure action, bankruptcy actions the borrower has taken, or is likely to take, and other legal costs associated with legally forcing the borrower to surrender title to his land, and the real closing costs of selling the land in the particular county where the land is located. When I asked about real legal costs of foreclosing on the borrowers I represented, no answer was given by the Credit Committee reviewing my clients' appeals, even though it was pointed out to the committee that in determining the discounted value of the land FCS had made the assumption that it would be 18 months before FCS would be able to sell the land. Obviously, with an 18 month lag time, the assumption had been made that some legal actions would have to be taken, other than those required at the sale of the land to a purchaser other than the borrower; but the real costs associated with that assumption were not computed.

3. *Determination of the value of the real property.*—One of the most critical values used in the calculations of the Cost of Foreclosure is the value of the real or personal property. Farm Credit Systems provided the value and the borrower had no input whatsoever. I believe this result is certainly contrary to the intent of the act, and specifically contrary to section 4.14(d) of the act, as mentioned below. Because of the interpretation of section 4.14(d) provided to me by Farm Credit Systems, as mentioned below, I do not necessarily believe that the Agricultural Credit Technical Corrections Act of 1988 corrected that problem. This became a problem in several cases because the values given to real property by Farm Credit Systems were artificially high, which made the determination of costs of foreclosure artificially low and increased the likelihood that the costs of restructuring would exceed the costs of foreclosure regardless of the plan the borrower submitted. This was especially true if the borrower had based his restructuring plan on what he or she felt was the real value of the land. The value given for the land did not reflect the recent (last 5 years) production capacity of the land, as mentioned above, and were also inflated by the ability of the appraiser for FCS to choose comparable land sales that reflected purchases where the buyer was financed by a Farm Credit System or Farmers Home Administration loan which also was based on inflated values, or simply by an outdated estimate of land value. In all cases I handled, the borrower was never provided with the appraisal or report indicating how land values were determined.

RESTRUCTURE COSTS—LEVEL PAYMENTS WORKSHEET

Present value factors.—How are they determined and are they applied to payments by the borrower as well as principal and interest forgiven?

FCS justified its restructure cost calculations by pointing out that the act allowed for the lender to determine the "present value of interest income and principal forgiven" in the course of restructuring under the terms suggested by the borrower. Thus, FCS amortizes the value of the funds it should have received over time and amortizes the value of the funds received under the borrower's plan and compares the two. As explained at several appeals hearings, PVF is the "Present Value Factor" the determination of which was never made clear. In the example provided in exhibit 1, the borrower suggested repaying the restructured principal of his loan in less than half the time required to pay off his previous loan, yet no added present value is given to the funds acquired by FCS under the borrower's plan due to their earlier receipt, nor is any added present value given to the cash the borrower would give to FCS immediately on the acceptance of the restructuring plan by FCS.

In the worksheet examples given, if FCS had valued the land at what the borrower said it was worth, the costs of restructuring are indeed lower than the costs of foreclosure. Another way of arriving at a restructured loan is to use the productive capacity of the land to determine how much should be repaid. FCS did not use this criteria, although authority for such use is found in section 4.14A(e)(2)(C) of the act.

In the notice denying restructuring, other defects appeared. First, the notice did not begin to adequately explain the reasons for denial of the restructuring. See exhibit 4. Simply saying, as in the exhibit, that the cost of restructuring is greater than the cost of foreclosure indicates nothing of the calculations needed to arrive at that conclusion. This violates directly section 4.13B(a)(2) of the act.

Further, the notice denying the borrower's request for restructuring and giving the borrower his rights of appeal did not provide the borrower with any notice of his right, under the act, to request that an independent appraisal be had pursuant to section 4.14(d) of the act. Even when such an appraisal was requested by myself on behalf of a client, that request was denied, because FCS interpreted section 4.14(d) to require that an independent appraisal could only be had if the borrower had offered additional collateral as part of his original offer to restructure his loan. This interpretation of section 4.14(d) may also have resulted from the fact that section 4.14(d)(1) only referred to subsection (b)(1) of that section, a problem which which may have been corrected by the Agricultural Credit Technical Corrections Act of 1988. In any case, such an interpretation certainly does not conform with the spirit of the act.

The appeal hearings themselves were rigidly conducted standoffs. At each Credit Review Committee hearing of an appeal, a carefully worded statement concerning the scope of the meeting was read. The statement allowed the borrower to submit additional information in support of his or her plan to be submitted, but, under the guidelines FCS established, no modification of the plan could be advanced! Thus, since the decision was based solely on the worksheets prepared by the lender, using the lender's formulation of the act, the only way to have prevailed at such a hearing would have been to show some arithmetic error in the calculations on the worksheet. This did not happen in my experience, nor did the borrower usually have the worksheets far enough in advance to check the calculations, nor did any borrower have the formulations and tables that explained the structure of the worksheet and the various factors applied on them. Further, in section 4.14, which discusses reconsideration of the actions of FCS lenders, I do not find anywhere any limitation on the borrower's ability to propose alternative plans of restructuring for the Credit Review Committee's consideration, so that they might ask the lender to reconsider the decision not to restructure.

Still another underutilized feature of the act has been section 102(b) of the act, which expresses the sense of Congress that FCS should try to work out solutions to the borrower's economic troubles among a broad variety of loan programs. Nor did FCS ever suggest mediation between the client's various creditors and FCS to help further the restructuring process. I would like to see a mandatory mediation component in the act as it applies to Farm Credit Systems.

In general, I found that the attitude of Farm Credit System lenders toward the Agricultural Credit Act of 1987 was that it was a perfunctory exercise that needed to be performed before foreclosure could either begin or continue. I have never heard of FCS ever proposing a restructuring plan on behalf of a borrower, although it has the authority to do so under the act, sections 4.14A(d)(2) and 4.14A(l). Given the artificially high land values used by FCS, at least in western North Dakota, the only apparent way to restructure was to offer additional collateral (which the farmer almost never has, otherwise he would not need restructuring), thereby exposing the farmer to increased risk and expanding the security of FCS on the loan, which, I suppose, would tend to make FCS more profitable. An evaluation by FCS of the fundamental considerations of what the farmer, any average farmer, could produce from the land originally made collateral for the note were not made or were ignored. In other words, even if no farmer could show repayability of the loan according to FCS calculations based on production from the land mortgaged to FCS, restructuring was denied.

FARMERS HOME ADMINISTRATION

Almost continuously since May, 1983, until approximately late November, 1988, Farmers Home Administration (FmHA) in North Dakota was judicially enjoined from continuing or commencing foreclosure actions. In the long history of the *Coleman* vs. *Lyng* lawsuit, FmHA had been obstructionist at best, and at times, contemptuous of Judge Bruce van Sickle's orders to come up with regulations which would allow certain provisions of 7 U.S.C. to be adequately implemented. The Agricultural Credit Act was intended to put into legislation some of what the *Coleman* case was trying to have enforced judicially, under standards of substantive due process. Finally, in November, 1988, regulations were published which implemented the FmHA loan restructuring provisions of the act, sections 601–626, and notices were sent out in late November. Because there had been sufficient advance notice of the content of the regulations, groups like FLAG were able to hold workshops concerning the application process throughout the Upper Midwest, sometimes with the assistance of local farm advocacy organizations.

Unfortunately, no workshop could completely prepare the FmHA borrower for the nearly 1 inch packet of materials sent by the County Supervisor to most delinquent borrowers. The most important information, concerning the rights of the borrower, including his right to appeal his receipt of the packet, was included in the first 10 pages or so of printed material, along with the accompanying cover letter. FmHA also included in the packet all of 7 CFR Regulation 1951–S, which included many sample forms to use in completing the application for one of the "primary loan servicing programs" listed in the instruction booklet, if the borrower was eligible for "primary loan servicing" programs. It was not clear whether it was necessary to complete all of the sample forms, where applicable, which were enclosed, or, as many borrowers later found out, whether other forms were necessary which were not included in the packet at all. Further, although the borrower might be eligible for other loan restructuring programs, it was not clear if application for those had to be made within the same 45 day period as application for the "primary loan servicing programs."

Apparently, like the FCS restructuring effort, the FmHA borrower had 45 days within which to complete his application, in full, for "primary loan servicing" options. In the first 2 weeks of December, attempts were made by various farm advocate groups in Washington to get FmHA to accept partial applications containing the essential information, but these were rebuffed. FmHA claimed that the act required a completed application, but, in fact, the act merely gives FmHA the authority to set forth the standards which the application must meet for loan servicing, section 331D(b) and states clearly that if the borrower requests in writing consideration for loan servicing programs within 45 days of receipt of the notice, FmHA must consider him or her for the programs. Section 331D(e). This section does not seem to require filling out any lengthy application. Like the FCS notices, FmHA's notice did not give the borrower any clues as to the criteria for review of the borrower's plan for restructuring. Attempts were made by FLAG through the Freedom of Information Act to obtain the computer program called DALR$ which evaluated the data provided by the borrower to FmHA in order to determine if the loan could be restructured, but significant obstacles prevented whatever might have been obtained from wide dissemination. Thus, the clients I attempted to assist with the FmHA restructuring generally submitted plans based on the income they expected from their land.

Although, because I never obtained an analysis of the DALR$ program, I have not reviewed the program and its use of the production, expenses and income data supplied by the borrower, I have found that FmHA is more generous in its write-downs than FCS, and more willing to assist the FmHA borrower into a more secure situation with generous terms of repayment. FmHA has always required submission of a Farm and Home Plan, and that is also required here. One reason for the willingness of FmHA to write down loans is that often FmHA is a second mortgagee on real property, and will not get a large part of its money if the first mortgagee forecloses.

Even so, FmHA has some of the same problems with land valuations as does FCS. To protect as much of its position as possible, appraisers for FmHA tend to value land much higher than the going rate. Again sale prices are often kept artificially high because of the ability of FCS and FmHA to loan purchase money to farmers who also are borrowers at those institutions. A separate land appraisal can be requested under the act, on appeal from a decision, but the borrower must choose from among three appraisers selected by FmHA, and bear the expense. Since FmHA is a lender of last resort, and borrowers delinquent with FmHA are likely to have limited funds, that last requirement of bearing the cost of the appraiser has a chilling effect on attempts to get a different appraisal done.

I have found the appeal process with FmHA to be much more in line with standard administrative appeal procedures than in the past. The body of quasi-independent appeal hearing officers established by the act assists in a more orderly determination of the issues involved in any appeal and I am basically satisfied with that process.

According to information I have received, FmHA has been more willing to restructure loans than FCS was initially. Whether or not this has resulted in keeping farmers on the land is not yet clear, because with most FmHA borrowers, it is also absolutely necessary to negotiate with other secured lenders before any kind of real restructuring can take place. I have not yet participated in any FmHA assisted mediation efforts provided for by section 353(d)(2) as amended by the act.

Other comments about FmHA will be made at the hearing on April 26, 1989.

[Exhibit 1, letter of Deino Sather, Assistant Vice President, Special Accounts, Farm Credit Services of Bismarck-Mandan; exhibit 2, Foreclosure Costs Worksheet; exhibit 3, Restructure Costs—Level Payments Worksheet; and exhibit 4, letter of Robert Wingenbach, Director of Special Credit, Farm Credit Services of Bismarck-Mandan follow:]

[Exhibit 1]

FARM CREDIT SERVICES OF BISMARCK-MANDAN,
Mandan, ND.

DEAR ________________: This letter is to notify you that, under provisions of the Agricultural Credit Act of 1987, your loan(s) may be a distressed loan(s), is in foreclosure, and may be eligible for restructuring. In order for us to determine whether your loan(s) is eligible for restructuring, you must submit a completed application and financial information as requested below within 48 days of the date of this letter.

Attached is a copy of the Seventh Farm Credit District's distressed loan restructuring policy and the forms necessary to complete and submit an application for restructuring.[1] I suggest that you read the policy and the forms carefully before submitting an application. The Production Credit Association will review any suitable loan for restructuring only if an application is submitted and completed in its entirety.

The restructuring policy provides that you may meet with a representative of this Farm Credit institution to review: the status of your loan(s), your financial condition, the suitability of your loan(s) for restructuring, and possibly to develop a plan for restructuring. As stated above, you have 48 days from the date of this letter to submit an application; therefore, if you wish to meet to review your loan(s) status, you are advised to arrange that meeting as soon as possible to allow ample time to submit an application within the 48 day period stated above.

In order to facilitate consideration of your application for restructuring, please complete in their entirety, sign, date, and return the following to Darrin Schwagler, Farm Credit Services of Bismarck-Mandan, P.O. Box 199, Carson, North Dakota 58529 at the earliest possible date:

1. Application for Loan Restructure;
2. Balance Sheet, Balance Sheet Supporting Schedule, Income and Expense Statement, and Supplementary Information form;
3. Copies of the last 3 years income tax returns;
4. Sign and return the Request for Credit Information form (please note that this form may be photocopied and sent to your creditors);

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[1] The referred to material is not a part of the printed hearing record.

5. Certification of Family Living Expenses; and
6. Affidavit of Financial Information Accuracy.

We have also attached a copy of a brochure on Farm Credit Counseling for your consideration.[2] We have found in the past that this organization has been able to help some of our distressed borrowers.

If you are represented by legal counsel, please provide this information to your legal counsel.

If you have any questions regarding the restructuring policy or you wish to arrange a meeting, please contact Darrin Schwagler at 622-3297.

Sincerely,

DEINO SATHER,
Assistant Vice President-Special Accounts.

Enclosures. [DO NOT PRINT.]

[Exhibit 2]

FORECLOSURE COSTS

WORKSHEET

Member view: $158,206.90.
Principal: $94,394.41.
Interest: $63,812.49.

		Costs
1. Investment		$158,207
2. Add costs:		
(A) Taxes 6 years times $1,600	$9,600	
(B) Disposition costs 3 percent	5,550	
(C) Legal 1 percent	1,850	
(D) Insurance and repair	1,000	18,000
3. Total investment		176,207
4. Less recoverable assets:		
(A) Stock	4,800	
(B) AV of property times (.8780) NPV	162,430	
(C) Other recoverable asset (PV)	0	167,230
5. Foreclosure costs		8,977

NOTE: Also see Supplement to Foreclosure/Restructure Cost Analysis.
COMMENTS: If foreclosure costs exceed restructure costs, explain here the appropriate credit factors which support foreclosure over restructure.

[Exhibit 3]

LOAN NO. ________________

RESTRUCTURE COSTS—LEVEL PAYMENTS

WORKSHEET

1. Restructure terms:
   - (A) Principal: $84,586.
   - (B) Cash: $17,000.
   - (C) Stock: $4,795.
   - (D) Other considerations: $ ________________
   - (E) Total considerations: $106,381.
   - (F) Interest rate/terms: 10.5 percent—12 year amortization.

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[2] See footnote 1, page 298.

		Costs
2. Present interest forgiven:		
(A) Present interest	$63,812	
(B) Less: cash payment	17,000	
(C) Less: stock	4,795	
(D) Less: other considerations		$42,017
3. Present value of foregone principal and interest:		
(A) Original payment times PVF [1]	116,047	
(B) Less: restructured payment times PVF [2]	97,787	18,260
4. Present value of interest concessions:		
(A) Restructured payment amount	13,655	
(B) Less: concession payment amount [3]	12,720	
(C) Foregone annual payment amount	935	
(D) Times: present value factor 12 years times	7.161	6,695
5. Other restructure costs:		
(A) Legal	1,000	
(B) ________________		1,000
6. Compromise/restructure costs		67,972

[1] Original payment—$92,657.24 at 12 percent, 25 year am=$11,813.80×9.823=$116,047.

[2] Restructured payment—$84,586 at 12 percent, 12 year am=$13,655.56×7.161=$97,787.

[3] Concession payment—$84,586×10.5 percent, 12 year am=$12,720.

Note: Also see Supplement to Foreclosure/Restructure Cost Analysis.

[Exhibit 4]

FARM CREDIT SERVICES OF BISMARCK-MANDAN,
Mandan, ND.

DEAR ________________: Your application for restructuring under the Agricultural [Credit] Act of 1987, distressed Loan Restructuring Policy, has been denied for the following reason:

The cost of restructuring your loan has been determined to be greater than the cost of foreclosure.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is the Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

Under the Farm Credit Act of 1971, as amended, you may have a Credit Review Committee review the decision to deny your restructure proposal, in your presence. To obtain such a review, you must submit a written request to the service center within 7 days of the date of this letter.

If you request a review of the decision, you may submit to the Credit Review Committee any relevant documents or other evidence to support the information contained in your proposal. You may submit such information if you believe it demonstrates the proposal is eligible and meets credit standards.

You will also be required to state, in your request for a hearing, if you intend to bring someone other than yourself in support to your request and to identify those parties.

Review by the Credit Review Committee is limited to your proposal, supplemented by relevant documents or evidence supporting the information contained in the proposal. You may not submit documents or evidence containing new information that was not mentioned in the proposal. Such information will not be considered by the Credit Review Committee in reviewing the decision on your proposal. If you have information pertaining to your proposal that was not previously submitted, you need to complete a new proposal which includes the previously submitted and new information. The Credit Review Committee decides on applications in its sole discretion, and its decision is the service center's final decision on the proposal.

Respectfully yours,

ROBERT WINGENBACH,
Director of Special Credit.

PREPARED STATEMENT OF BRUCE BOHNSACK, VICE CHAIRMAN, FARM CREDIT BANK, ST. PAUL, BOARD OF DIRECTORS, DIRECTOR, SEVENTH DISTRICT, FARM CREDIT BOARD, HILLSBORO, ND

Good afternoon. My name is Bruce Bohnsack. My wife, Esther, and I operate an 800-acre small grain and soybean farm at Hillsboro, North Dakota. I am here today as a director of the Farm Credit Bank of St. Paul. I appreciate the opportunity to be here to up date you on several issues taking place at the District level.

As you're aware, many changes have occurred since the beginning of 1987, when Congress began contemplating yet another legislative initiative to help the financially distressed Farm Credit System.

RESTRUCTURED LOANS

Since that time, January of 1987, the St. Paul District has been committed to a policy and program to restructure nonperforming loans. Our intent was to find a way to help a farmer who could not make his full payments restructure his debt to a level where he could make payments. This did two things: it first helped shore up the unbelievable costs of carrying the nonaccrual loans, and, equally important, allowed our troubled borrowers to feel good about themselves by being able to once again be paying off their debts. We initiated the program as a good business policy and remain convinced it was the right direction to take.

I'd like to talk for a moment about our restructured loan experience in the past 2½ years and, for today's purposes, will focus solely on what has been done in North Dakota.

The FLBA's in the State of North Dakota have restructured 2,465 loans, with a value of $380.3 million. Of these restructures, about one-quarter (632) were what we call "cashouts," which means we reached a final settlement with the borrower and no longer have a loan with them. About one-eighth (353) of the restructures were "deedbacks," where as settlement we acquired property in lieu of foreclosure. Therefore, over 60 percent of all our restructures in North Dakota involve a continuing relationship with FCS. This and subsequent material is contained in a chart attached to the end of my statement.

In North Dakota, 13 percent of our existing borrowers, and over 20 percent of our existing loan volume, represents restructured loans. Unfortunately, I imagine you've not heard from the many restructured borrowers who are pleased with the outcome.

I don't mean to imply, however, that all has been totally rosy, either here in North Dakota, or throughout our district. Today we have about 200 North Dakota borrowers who are either in foreclosure or bankruptcy. They represent approximately $44.3 million, or 4 percent, of our loan volume.

You've no doubt heard from some of these borrowers. I have. Senator, not every farmer can be restructured. Some are just too deeply in over their heads with debt to ever be able to work out an equitable solution with our cooperative lending institution.

As a district director, I don't want to get involved in specific operational issues, which are best left to those here from the service centers to address. However, as a district director I have sat in on several credit appeal hearings, as required by FCA's interpretation of the 1987 Agricultural Credit Act. These are hearings that follow a series of restructure meetings with the service center where mutual resolution of a debt restructure program has not been reached. I can tell you every effort has been made to consider every possible alternative to foreclosure.

The St. Paul District Special Asset Group, comprised of senior management and credit staff in St. Paul, reviews each unrestructured nonaccrual account, each new nonaccrual, and any restructure denial to determine if borrowers have been fully afforded their rights under the Agricultural Credit Act of 1987.

TROUBLED DEBT

To give you a quick overview of the troubled real estate debt today in North Dakota, I'll cite figures available at the end of the first quarter of this year. There were 372 loans for a total value of $50.8 million in troubled debt. Of these, 262 loans were yet to be restructured and 110, totaling $16 million, were delinquent loans to previously restructured borrowers. Of restructured loans in North Dakota, 7 percent are delinquent at this time, which is fairly consistent over our four-State district.

As was the case when loans were initially restructured, each such loan now in delinquency will be handled on a case-by-case basis. If a delinquent restructured loan meets the distressed loan definition, then we will fully comply with the District Distressed Loan Policy and the Agricultural Credit Act of 1987.

INTEREST RATES

The largest influence on rates that FCB charges to borrowers is the cost we pay for funds. In the past Farm Credit has priced according to the average cost of money. Last summer our board adopted a policy of pricing to market on our variable rates. Our experience has been that this keeps us more current with other interest rates than in the past.

As the chart described as exhibit B shows, in a comparison of 3 and 6 month Treasury bills and Farm Credit Bonds, short term Treasury rates increased an average of 2.75 percent in the past year. In comparison, Farm Credit securities increased 3.25 percent.

In actual terms, the average cost of FCB, St. Paul's debt for the short-term loans increased 1.56 basis points from April 1988 to April 1989.

In spite of a one-time 50-basis point reduction in the long term pool from financial assistance, the average cost of FCB St. Paul debt for long term loans increased from 9.65 to 10.10.

The other major factor influencing interest rates is cost of operations. The cost in the St. Paul District (including service centers) per $100 of loans was $1.82 in 1986, with a steady decline over 2 years to $1.49 in 1988. Operating expenses for the district peaked at $122 million in 1986, and declined to $98 million at the end of last year, or a 22 percent decrease over the 2 years. However, our volume has decreased 14 percent during that period, thereby minimizing the favorable impact on our interest rates.

Both FCB St. Paul and service centers have struggled over the past 2 years to bring about decreases in total operating expenses. Over the 2-year period of 1987 and 1988 both the District service centers and the FCB reduced their expenses by approximately 23 percent. Cost reductions achieved by the FCB and associations have been approximately the same over the past 2 years, measured on a percentage basis.

APPRAISAL PROCESS

Another area I'd like to discuss is Farm Credit's appraisal process. In 1986 we decided to centralize the appraisal process; this was accomplished in 1988. The appraisal process was centralized for several reasons. The major ones are for consistency throughout the district, objectivity in the credit decisionmaking process, and the quality and reliability of our financial statements. In addition, it was felt that by removing the loan officer from the appraisal process, there would be less opportunity for influence by any borrower's request for credit.

Since then, real estate appraisals are being done by appraisers who have had specific training, and are not involved in other parts of the organization's activities.

The appraisals for new credit as well as for acquired property are done on the basis of current and supportable market values. We're suggesting that a quality real estate appraisal is based on current comparable sales data, based on:

(1) Property of similar characteristics of the property being appraised;

(2) Multiple sales transactions that are analyzed, verified and documented;

(3) Benchmark programs or similar types of studies that define specific values; and

(4) Recognition that all three approaches (sales comparisons, cost, and income) are valid indicators of the real estate market.

On the other hand, special use assets and any single purpose property which has very limited comparable market data is valued individually by senior experienced appraisers, depending on the circumstances and uniqueness of the property.

All real estate taken as collateral, acquired property and all litigation actions requiring collateral values must have a foundation appraisal, which is one based on a field inspection and documented on forms with a narrative discussion of the subject property. These appraisals must adequately describe the subject property with legal description, etc., and they must have adequate support for the value based on the time the value was made.

SALE OF ACQUIRED PROPERTY

You've asked about our procedure for selling acquired property. Our policy is in compliance with the Agricultural Credit Act of 1987 and pertinent Federal regulations. The following is the process we use in selling acquired property:

1. At the time of acquisition a current appraisal is used to establish a current market value.
2. Develop and plan a sales program to best decide how and when to market property for sale.
3. After receiving the new appraisal and making the decision to offer the property for sale, notify the former owner of his/her right to purchase the said property at the appraised fair market value.
4. The former owner has 30 days to decide whether to elect to purchase the property at appraised value, to make an offer below appraised value, or just not respond, thus waiving his/her rights.
5. If the former owner elects to purchase the property at appraised value, we must accept offer and do so by accepting and selling within 30 days of receiving offer.
6. If the former owner's offer is less than appraised value, we may either accept or reject the offer. We must notify the former owner of our decision within 15 days. If we accept, we will close at a reasonable, mutually agreeable time.
7. If FCS rejects the offer at a lesser value or the former owner does not respond, the property can be offered for sale to the general public.
8. If offer is accepted from another person at a price equal to or less than former owner's offer, we will come back to former owner again with another opportunity to purchase the property at terms equal to those given to the third party.
9. If the former owner's offer at less than the appraised value was rejected and another offer is received that is higher than the former owner's declined offer, the property will be sold to the third person without further notice to the former owner.
10. If the former owner has not responded within the 30 days called for by law, they lose the right of first refusal and we may sell the property to any person at any time without further notice given.

We follow similar procedures if we elect to lease a property.

During the first 3 months of this year 8 percent of our sold property has been purchased by former owners, on the average, at less than the appraised value. Properties sold to others, on the average, have been sold slightly higher than appraised value.

FMHA DEMONSTRATION PROJECT

We were particularly pleased to see the Farmers Home Demonstration Project included in the Agricultural Credit Act of 1987 and have been anxious to have final FmHA regulations and begin to work together to benefit both new farmers and our acquired property inventory.

We fully support this program and have met with FmHA leaders to facilitate and expedite implementation.

Unfortunately, due to the long delay in getting the regulations approved through the FmHA/OMB process, actual use of this program was not available during the winter, our prime land sales period. However, our brief experience in North Dakota to date shows seven offers have been generated for $747,000. Though the current volume is small, we hope for more activity to be generated in the future.

LOAN LOSS RESERVE LEGISLATION

I'd like to just comment on H.R. 1565, legislation introduced recently by your colleague Congressman Byron Dorgan in his continuing attempt to assist our Production Credit Associations in receiving equitable tax treatment on their reserves for loan losses. We lost that deductibility in the Tax Reform Act of 1986, but the smaller banks still enjoy that benefit. I know the directors here can speak more fully to the issue, but would express my hope that you will also endorse this legislative approach in the U.S. Senate.

SUMMARY

In summary, Senator, I am proud to be a director on the Farm Credit Bank St. Paul Board. I must confess it's not always been a comfortable position, but I feel confident that the intent of the board and management of St. Paul and the service centers throughout the district is to uphold the cooperative principles and congressional mandate we were organized under. Our policy deliberations are undertaken with the best interest of the owners of this business uppermost in our minds.

Thank you for the opportunity to be here today. I'll be happy to try to answer any questions you may have.

[Attachments exhibit A, Farm Credit Services, St. Paul, and exhibit B, Comparison, follow:]

[Exhibit A]

FARM CREDIT SERVICES, ST. PAUL

[In millions of dollars]

	Number	Amount
Current real estate loan volume outstanding in North Dakota	11,257	$1,100
Restructured loans:		
Restructured with continuing relationship	1,480	263.3
Deed backs	353	49.8
Cashouts	632	67.2
Total restructures	2,465	380.3
On March 31, 1989, the troubled debt in North Dakota was:		
Delinquent loans to previously restructured borrowers	110	16.0
Loans yet to be restructured	262	34.8
Total troubled debt	372	50.8
Borrowers in foreclosure	149	25.0
Borrowers in bankruptcy	111	19.3
Total	260	44.3

[Exhibit B]

COMPARISON

	April 15, 1988	April 12, 1989	Change
Treasury:			
3 month	6.14	8.98	2.84
6 month	6.67	9.31	2.64
1 year	7.11	9.51	2.40
Farm Credit Bonds:			
3 month	6.82	10.11	3.29
6 month	7.09	10.35	3.26

PREPARED STATEMENT OF FARM CREDIT SERVICES OF FARGO, ACA, TESTIMONY REGARDING FEDERAL DISCLOSURE REGULATIONS

INTRODUCTION

This testimony is presented on behalf of the board of directors and management of Farm Credit Services of Fargo, ACA, in response to a request from U.S. Senator Kent Conrad at a formal congressional hearing, Wednesday, April 26, 1989, at the Heritage Center in Bismarck.

PURPOSE

The purpose of this testimony is:

(1) To summarize the disclosure requirements of the Farm Credit Act as amended by the Agricultural Credit Act of 1987 and the implementing of Farm Credit Administration (FCA) regulations; and

(2) To discuss the costs of disclosure versus the benefits intended by the act and regulations. We will identify some areas in which we believe the costs outweigh the benefits.

This testimony will be organized as follows:

I. General position regarding disclosure;
II. Description of Farm Credit Services of Fargo, ACA;
III. Review of requirements regarding disclosure to shareholders and notice to borrowers;
IV. Summary and conclusion; and
V. Exhibits.

I. GENERAL POSITION REGARDING DISCLOSURE

The board of directors and management of Farm Credit Services of Fargo, ACA, are supportive of the purpose and intent of disclosure laws. We strongly agree that:

A. Farm Credit borrowers must fully understand the terms and conditions under which their loan is written, as well as their rights and obligations under the loan contract;

B. Stockholders in Farm Credit institutions should be fully aware of the financial condition of their institution and the risk inherent in the stock they own;

C. Directors and management of Farm Credit institutions should be held accountable for the financial condition of their banks and associations and should operate such institutions in a climate of openness, free of any conflict of interest or suppression of information.

We agree that the Farm Credit Act Amendments of 1985 and 1986 and the Agricultural Credit Act of 1987 have resulted in more informed borrowers and more accountable management and directors.

HOWEVER, for disclosure to truly serve the purposes outlined above, the information disclosed must be meaningful, readable and understandable so that borrowers can use the information in making personal financial decisions as well as decisions regarding the management of their cooperative.

In many instances, disclosure regulations require Farm Credit institutions to distribute information that is so voluminous, it would take hours just to read it, and so complex it would take an attorney or an accountant to understand it. Not only is this type of disclosure costly, it defeats the very purpose for which it is intended.

II. DESCRIPTION OF FARM CREDIT SERVICES OF FARGO, ACA

Farm Credit Services of Fargo is an agricultural credit association (ACA) serving a nine-county area of southeast North Dakota. We officially became an ACA on April 1, 1989, with the merger of the former Production Credit Association of Fargo and Federal Land Bank Association of Fargo.

Following is a description of our territory and size:

Counties served: Cass, southern Traill, Richland, Ransom, Sargent, Dickey, La Moure, Barnes, Stutsman.

Branch locations: Fargo, Hillsboro, Wahpeton, Lisbon, La Moure, Valley City, Jamestown.

Number of borrowers: Approximately 3,500.

Mortgage loan volume: 3,000 loans—$343.6 million.

Operating/equipment loan volume: 1,200 loans—$78 million.

Operating budget: $4.2 million annually.

Staff size: 95 employees.

Related services: Computerized farm accounting service bureau and software; Tax planning and preparation; Multi-peril crop insurance; Crop hail insurance; and Group term life and disability insurance.

III. REVIEW OF REQUIREMENTS REGARDING DISCLOSURE TO SHAREHOLDERS AND NOTICE TO BORROWERS

A. DISCLOSURE TO SHAREHOLDERS VERSUS NOTICE TO BORROWERS

"Disclosure to Shareholders" can generally be described as information required by the Farm Credit Act of 1971 as amended ("act") and implementing Farm Credit

Administration regulations ("regulations") which pertains to the recipient's interests as a shareholder or "part owner" of the business.

"**Notice to Borrowers,**" on the other hand, can generally be described as information required by the act and regulations which pertains to the recipient's interests as a borrower.

The primary purpose of Disclosure to Shareholders is presumably to assist recipients in making informed, intelligent decisions in exercising the voting rights and other privileges of shareholder status (e.g., selection of directors, voting on mergers, monitor and evaluate safety of stock investment, etc.).

The primary purposes of Notice to Borrower requirements are presumably to notify the recipients of the availability of various borrower rights and alternatives and to assist the recipients in making informed, intelligent decisions in exercising these rights and exploring alternatives available to meet their credit needs.

Hence, the main distinction between Disclosure to Shareholders and Notice to Borrowers is the capacity in which recipients would use the information in decisionmaking. This distinction aside, Disclosure to Shareholders and Notice to Borrowers have at least two things in common:

1. The primary purposes of the disclosure/notice requirements are to make recipients aware of certain decisionmaking opportunities and assist them in making informed, intelligent decisions, and
2. The disclosure/notice requirements place administrative burdens and costs on the Farm Credit System institutions that must comply with the requirements.

B. FCS OF FARGO SUGGESTED DISCLOSURE/NOTICE CRITERIA

In light of these commonalities and as stated in the Introduction, FCS of Fargo supports Disclosure to Shareholders and Notice to Borrowers provided such disclosure/notice requirements, individually and in total:

1. Require information that is understandable, manageable, meaningful and useful to the shareholder/borrower recipients in their decisionmaking processes, and
2. Provide benefits to the recipient shareholders/borrowers that justify the administrative burdens and costs placed on the complying FCS institutions.

Unfortunately, not all of the disclosure/notice requirements meet both of these criteria. Furthermore, the total package of disclosure requirements, in aggregate, does not meet the first or second criteria.

Specifically, FCS of Fargo complied with 20 different disclosure/notice requirements in 1988 (see attached exhibit).

Disclosure to Shareholder requirements:

(1) Annual report;
(2) Quarterly report;
(3) Annual meeting information statement;
(4) Capitalization bylaws disclosure;
(5) Plan of merger disclosure;
(6) Equity purchase disclosure;
(7) Charter, articles and bylaws disclosure;
(8) Disclosure of list of stockholders; and
(9) Notice of retirement of stock.

Notice to Borrower requirements:

(10) Interest rate disclosure at closing;
(11) Interest rate disclosure at time of rate change;
(12) Differential interest rate disclosure;
(13) Loan document disclosure;
(14) Appraisal disclosure;
(15) Notice of availability of restructuring;
(16) Notice of action on restructure application;
(17) Notice of action on loan application;
(18) Notice of decision of Credit Review Committee;
(19) Notice of transfer to nonaccrual status; and
(20) Notice of right of first refusal.

In addition, the following two disclosure requirements were not triggered in FCS of Fargo in 1988 but will likely be triggered in 1989 or thereafter:

(21) Interest rate disclosure at time of stock change; and
(22) Pooled/nonpooled loan disclosure.

C. CRITERIA APPLIED TO AGGREGATE PACKAGE OF DISCLOSURE/NOTICE REQUIREMENTS

FCS of Fargo's compliance with these 22 requirements generated a staggering total of 772,000 pages of information in 1988 at a total estimated identifiable out-of-pocket cost of $57,300. With a total of approximately 3,500 borrowers, this means the average stockholder/borrower received a total of 220 pages of information from FCS of Fargo in 1988 at a cost to that stockholder/borrower of $16.

We recognize that 290,000 pages and $13,000 of the $57,300 total are attributable to the capitalization bylaws and plan of merger disclosures, which are not annual disclosures. However, there still remains 482,000 pages of information distributed at a cost of $44,300. Further, in the present climate of System restructuring, one-time disclosures such as this seem to reoccur every year.

Few, if any, stockholders/borrowers would be willing to spend the time and effort necessary to read and digest 220 pages of information. Fewer still would be willing to take $16 out of their wallets to pay for this information. This is over-disclosure to the point that from the average stockholder/borrower's perspective, FCS correspondence becomes indistinguishable from the rest of the bulk "junk" mail. Contrary to the rest of the "junk" mail, however, the average stockholder/borrower is paying for this information.

Eighteen of these 22 disclosure/notice requirements are congressionally mandated. However, 4 of the 22 are creations of the FCA. These four are the annual meeting information statement, the quarterly report, the equities purchase disclosure, and the interest rate disclosure given at the time of stock change.

D. CRITERIA APPLIED TO INDIVIDUAL DISCLOSURE/NOTICE REQUIREMENTS

In our opinion, two of the disclosure requirements in particular do not provide meaningful information in a cost-effective manner and hence require substantial revisions. These two are the annual report and the quarterly report.

These two disclosure requirements will be reviewed below under the following format:

a. Statutory and/or regulatory citation for the requirement;
b. Description of disclosure:
(1) Required information;
(2) Recipients;
(3) Timing; and
(4) Distribution.
c. Analysis of disclosure requirement according to the following criteria:
(1) Is the information understandable, manageable, meaningful and useful to the recipients in their decisionmaking processes?
(2) Do the benefits provided the recipient justify the administrative burdens and costs placed on the disclosing FCS institution?
d. Recommendations, if any.

As to the remaining 20 of the 22 disclosure/notice requirements, although there may be some minor technical concerns and duplication involved, assuming policy exists justifying the underlying rights, FCS of Fargo has no recommendations to improve the actual disclosure/notice requirements.

However, it should be noted that these other 20 disclosure/notice requirements do substantially contribute to the above-described "paper blizzard." Hence, for purposes of documenting the comprehensiveness of the existing disclosure/notice requirements, which in turn supports FCS of Fargo's overall recommendation to oppose the further expansion of disclosure/notice requirements, the remaining 20 disclosure/notice requirements will be briefly reviewed below under the following "condensed" format:

a. Statutory and/or regulatory citation for the requirement;
b. Description of disclosure:
(1) Required information;
(2) Recipients;
(3) Timing; and
(4) Distribution.

1. Annual Report

a. Statutory and/or regulatory citation: Congressional—sec. 5.19(b)(1) of the act (12 U.S.C. 2254); FCA—subpart A of part 620 of the regulations (12 CFR sec. 620.2).

b. Description of disclosure/notice requirement:

(1) Required information: The act merely requires that "each institution of the System shall make and publish an annual report of condition as prescribed by the Farm Credit Administration."

Regulations provide that the annual report contain the following items: (a) description of business, (b) description of property, (c) legal proceedings, (d) description of capital structure, (e) description of liabilities, (f) selected financial data, (g) management's discussion and analysis of financial condition and results of operations, (h) directors and senior officers, (i) compensation of directors and senior officers, (j) transactions with senior officers and directors, (k) involvement in certain legal proceedings, (l) relationship with independent public accountant, and (m) financial statements.

(2) Recipients: The institution's shareholders.

(3) Timing: To be distributed within 90 days of the end the institution's fiscal year.

(4) Distribution: Not addressed in regulations. FCS of Fargo uses third class mail.

c. Analysis of disclosure/notice requirement: The Notes to Financial Statements are overly complex and technical for the average reader and may well block effective communication of the intended message. At this time, however, we are uncertain as to how much of this detail is a result of FCA regulation and how much stems from the requirements of our independent auditors and generally accepted accounting principles (GAAP).

d. Recommendations: While we question whether the extensive financial reporting in the annual report actually results in effective communication with the stockholders, at this time we are not recommending any changes in the association annual report. However, we do recommend the elimination of the FCA requirement that the FICB (now FCB) financial statements be sent to PCA borrowers.

2. Quarterly Report

a. Statutory and/or regulatory citation: Congressional—does not appear to be a requirement. FCA—subpart B of part 620 of the regulations (12 CFR sec. 620.10).

b. Description of disclosure/notice requirement:

(1) Required information: (a) Management's discussion and analysis of financial condition and results of operations; (b) interim statements of condition (balance sheet); (c) interim statements of income; (d) interim statements of changes in financial condition; and (e) interim statements of changes in capital.

(2) Designated recipients: The institution's shareholders.

(3) Timing: To be distributed no later than 45 days after the end of the quarterly period to which it relates.

(4) Distribution: May be by mail or by publication in newspaper or periodicals in the trade area of wide enough circulation to be reasonably assured that all of the institution's shareholders are reached on a timely basis. FCS of Fargo uses third class mail.

c. Analysis of disclosure/notice requirement: The existing regulation requires information that is excessive, technical and ineffective. It allows for publishing the quarterly information in local newspapers to reduce costs, but due to the excessive amount of information, these costs are not reduced through this process. Stockholders should be informed of summary balance sheet and income statement information. They also should have access to more detailed information if they so desire. Stockholders complain about the high cost they assume they are paying for information they don't want.

d. Recommendations: The objectives of giving the stockholders the quarterly financial information they want in an efficient, cost-effective manner can be met. FCA should require only summary balance sheet and income statement information on a quarterly basis. This would allow us to take advantage of the cost effectiveness of publishing versus mailing, as FCA intended. Complete, detailed information would be available upon request.

To accomplish this, the regulation should be amended to eliminate the requirements of: (a) management's discussion and analysis of financial condition and results of operation; (b) interim statements of changes in financial condition; (c) interim statements of changes in capital; and (d) all but the most necessary footnotes concerning the financial statements.

3. Annual Meeting Information Statement

a. Statutory and/or regulatory citation: Congressional—does not appear to be a requirement. FCA—subpart C of part 620 of the regulations (12 CFR sec. 620.20).

b. Description of disclosure/notice requirement:

(1) Required information: (a) Date, time, and place of the meeting(s), (b) voting shareholders, (c) directors, (d) nominees,(e) other shareholder action, and (f) relationship with independent public accountant.

(2) Designated recipients: The institution's shareholders.

(3) **Timing:** To be distributed at least 10 days prior to any meeting at which directors are to be elected.

(4) **Distribution:** Not addressed in regulations—FCS of Fargo uses third class mail.

4. Capitalization Bylaws Disclosure

a. **Statutory and/or regulatory citation:** Congressional—sec. 4.3A(c)(2) of the act (12 U.S.C. 2154a); FCA—sec. 615.5220 of the regulations (12 CFR sec. 615.5220).

5. Plan of Merger Disclosure

a. **Statutory and/or regulatory citation:** Congressional—sec. 7.11(a) of the act (12 U.S.C. 2279e); FCA—section 611.1122 of the regulations (12 CFR sec. 611.1122).

b. **Description of disclosure/notice requirement:**

(1) **Required information:** 16 items are detailed in section 611.1122(e) of the regulations.

(2) **Designated recipients:** To the institution's shareholders.

(3) **Timing:** To be sent at the time the written notice of the meeting called to consider the disclosure is sent to the stockholders in accordance with the institution's bylaws.

(4) **Distribution:** Not addressed in regulations—FCS of Fargo uses first class mail.

6. Equity Purchase Disclosure

a. **Statutory and/or regulatory citation:** The equity purchase disclosure does not appear to be a congressional requirement. The FCA requirement is found in section 615.5250 of the regulations (12 CFR sec. 615.5250).

b. **Description of disclosure/notice requirement:**

(1) **Required information:** (a) The institution's most recent annual report, (b) the institution's most recent quarterly report, (c) a copy of the institution's capitalization bylaws, and (d) a written description of the terms and conditions under which the equity is issued.

(2) **Designated recipients:** Prospective borrowers.

(3) **Timing:** To be provided prior to loan closing.

(4) **Distribution:** Not addressed in regulations—FCS of Fargo hand delivers at the time of loan application.

7. Articles, Charter and Bylaws Disclosure

a. **Statutory and/or regulatory citation:** Congressional—sec. 4.13A of the act (12 U.S.C. 2200); FCA—section 618.8325(c) of the regulations (12 CFR sec. 618.8325).

b. **Description of disclosure/notice requirement:**

(1) **Required information:** The institution's articles, charter and bylaws.

(2) **Designated recipients:** Any owner of stock or participation certificates.

(3) **Timing:** To be furnished upon request of any owner of stock or participation certificates.

(4) **Distribution:** Not addressed in regulations—FCS of Fargo uses first class mail.

8. Disclosure of List of Shareholders

a. **Statutory and/or regulatory citation:** Congressional—sec. 4.12A of the act (12 U.S.C. 2184); FCA—section 618.8310 of the regulations (12 CFR sec. 618.8310).

b. **Description of disclosure/notice requirement:**

(1) **Required information:** Current list of stockholders.

(2) **Designated recipients:** Under certain conditions, a current list of stockholders must be provided to stockholders.

(3) **Timing:** Within 7 days after receipt of a written request.

(4) **Distribution:** Not addressed in regulations; FCS of Fargo uses first class mail.

9. Notice of Retirement of Stock

a. **Statutory and/or regulatory citation:** Congressional—not addressed. FCA—section 615.5280(f) of the regulations (12 CFR sec. 615.5280).

b. **Description of disclosure/notice requirement:**

(1) **Required information:** (a) Statement that the institution has declared the borrower's loan to be in default; (b) statement that the institution will retire all or part of the equities of the borrower in total or partial liquidation of his or her loan; (c) a description of the effect of the retirement on the relationship of the borrower to the institution; (d) a statement of the amount of the outstanding debt that will be owed to the institution after the retirement of the borrower's equities; and (e) the date on which the institution will retire the equities of the borrower.

(2) **Designated recipient:** Borrowers whose stock is being retired.

(3) **Timing:** At least 10 days prior to the retirement of any equities of a holder if in person, or 13 days if by mail.

(4) Distribution: In person or by first class mail to the last known address of the equity holder

10. Interest Rate Disclosure at Closing

a. Statutory and/or regulatory citation: Congressional—sec. 4.13(a) of the act (12 U.S.C. 2199). FCA—section 614.4367(a) of the regulations (12 CFR sec. 614.4367).

b. Description of disclosure/notice requirement:

(1) Required information: (a) The current rate of interest on the loan, (b) certain information in the case of an adjustable rate loan, (c) the current effective interest rate on the loan with one or more representative examples of the impact of stock ownership and loan origination charges, (d) with certain exceptions, a statement indicating that stock that is purchased is at risk, and (e) a statement indicating the various types of loan options available.

(2) Designated recipients: Prospective borrowers.

(3) Timing: To be provided not later than the time of the loan closing.

(4) Distribution: Not addressed in regulations; FCS of Fargo hand delivers the information to its prospective borrowers at the time of loan closing.

11. Interest Rate Disclosure at Time of Rate Change

a. Statutory and/or regulatory citation: Congressional—section 4.13(a) of the act (12 U.S.C. 2199) provides in part that "[i]n accordance with regulations of the Farm Credit Administration, qualified lenders shall provide to borrowers * * * meaningful and timely disclosure not later than the time of the loan closing, of— * * * (4) any change in the interest rate applicable to the borrower's loan; * * *." FCA—section 614.4367(c) of the regulations (12 CFR sec. 614.4367).

b. Description of disclosure/notice requirement:

(1) Required information: (a) The new interest rate on the loan, (b) the date on which the new rate is effective, and (c) a statement of any factors other than standard adjustment factors which were taken into account in establishing the new interest rate.

(2) Designated recipients: Borrowers whose interest rate is adjusted.

(3) Timing: To be made not later than the effective date of a decrease in the interest rate and not later than 10 days before the effective date of an increase in the interest rate.

(4) Distribution: Regulations require information to be in writing. FCS of Fargo uses first class mail.

12. Differential Interest Rate Disclosure

a. Statutory and/or regulatory citation: Congressional—sec. 4.13(b) of the act (12 U.S.C. 2199). FCA—section 614.4368 of the regulations (12 CFR sec. 614.4368).

b. Description of disclosure/notice requirement:

(1) Required information: (a) A review of the loan to determine if the proper interest rate has been established, (b) a written explanation of the basis for the interest rate charged, and (c) a written explanation of how the credit status of the borrower may be improved to receive a lower interest rate on the loan.

(2) Designated recipients: Borrowers.

(3) Timing: To be provided when the borrower requests it.

(4) Distribution: To be provided in writing.

13. Loan Document Disclosure

a. Statutory and/or regulatory citation: Congressional—sec. 4.13A of the act (12 U.S.C. 2200). FCA—section 618.8325(b) of the regulations (12 CFR sec. 618.8325).

b. Description of disclosure/notice requirement:

(1) Required information: Loan documents which means "any form, application, agreement, contract, instrument, or other writing to which a borrower affixes his signature or seal and which the qualified lender intends to retain in its files as evidence relating to the loan contract * * *."

(2) Designated recipients: Borrowers.

(3) Timing: To be provided at the execution of the loan and subsequent thereto, upon written request of a borrower.

(4) Distribution: FCS of Fargo either hand delivers or uses first class mail.

14. Appraisal Disclosure

a. Statutory and/or regulatory citation: Congressional—sec. 4.13A of the act (12 U.S.C. 2200). FCA—section 618.8325(b) of the regulations (12 CFR sec. 618.8325).

b. Description of disclosure/notice requirement:

(1) Required information: A copy of each appraisal of the borrower's assets made or used by the qualified lender.

(2) Designated recipient: The borrower.

(3) Timing: At any time, on request of the borrower.

(4) Distribution: Not addressed in regulations; FCS of Fargo either hand delivers or uses first class mail.

15. Notice of Availability of Restructuring

a. Statutory and/or regulatory citation: Congressional—sec. 4.14A(b) of the act (12 U.S.C. 2202a). FCA—section 614.4516(a) of the regulations (12 CFR sec. 614.4516).

b. Description of disclosure/notice requirement:

(1) Required information: (a) A copy of the lender's restructure policy that governs the treatment of distressed loans; (b) all materials necessary to enable the borrower to submit an application for restructuring the loan; (c) notice that the loan may be suitable for restructuring; and (d) notice that the alternative to restructuring may be foreclosure.

(2) Designated recipient: Borrowers whose loans are or have become distressed loans. In the case of a loan involving more than one primary obligor, the information may be given to any one of such parties.

(3) Timing: To be given: (a) On a determination by a qualified lender that a loan is or has become a distressed loan, and (b) not later than 45 days before a qualified lender begins foreclosure proceedings with respect to a loan outstanding to any borrower.

(4) Distribution: In the comments to the regulations, FCA indicated that, although FCA will not require lenders to use certified mailings, FCA expects the lender may choose to use certified mail as a practical means of ensuring that the notice has been provided to the borrower on time. FCS of Fargo sends the notice of availability of restructuring by certified mail.

16. Notice of Action on Restructure Application

a. Statutory and/or regulatory citation: Congressional—sec. 4.13B(b) of the act (12 U.S.C. 2201). FCA—section 614.4518 of the regulations (12 CFR sec. 614.4518).

b. Description of disclosure/notice requirement:

(1) Required information: Lender's decision on a restructuring application; if the application is denied: (a) the reason(s) for the denial, and any critical assumptions and relevant information upon which the reasons are based, except that any confidential information shall not be disclosed, (b) notification that the borrower may request a review of the denial, (c) notification that any request for such review must be made in writing within 7 days after receiving such notice, and (d) a brief explanation of the process for seeking review of the denial, including the appraisal process; and the right to appear before the Credit Review Committee accompanied by counsel or by any other representative, if the borrower so chooses.

(2) Designated recipient: To be given to borrowers who apply for restructuring. In the case of a loan involving one or more primary obligors, the notice may be provided to any one of such parties.

(3) Timing: To be promptly provided after the decision on the restructuring application is made, which decision is to be made in as expeditious a manner as is practicable.

(4) Distribution: To be sent by certified mail or in any manner that requires a primary obligor to acknowledge receipt of the lender's decision.

17. Notice of Action on Loan Application

a. Statutory and/or regulatory citation: Congressional—sec. 4.13B(a) of the act (12 U.S.C. 2201). FCA—section 614.4441 of the regulations (12 CFR sec. 614.4441).

b. Description of disclosure/notice requirement:

(1) Required information: The lender's decision on a loan application and the following if the same is an adverse credit decision: (a) the specific reason(s) for the qualified lender's action, (b) notification that the applicant can request a review of the decision, (c) notification that any request for review must be made in writing within 30 days after the applicant's receipt of the qualified lender's notice, and (d) a brief explanation of the process for seeking review of the decision, including the appraisal process; whom to contact at the lender for access to the relevant information, and the right to appear before the Credit Review Committee.

(2) Designated recipient: Applicants who apply for loans. In the case of a loan application involving more than one primary obligor, the notice may be provided to any one of such parties.

(3) Timing: To be promptly provided after the decision on the loan application is made, which decision is to be made in as expeditious a manner as is practicable.

(4) Distribution: Not addressed in regulations. FCS of Fargo sends the notice by first class mail.

18. Notice of Decision of Credit Review Committee

a. Statutory and/or regulatory citation: Congressional—sec. 4.14(e) of the act (12 U.S.C. 2202); FCA—section 614.4443(d) of the regulations (12 CFR sec. 614.4443).

b. Description of disclosure/notice requirement:

(1) Required information: The decision of the Credit Review Committee and the reasons for the decision.

(2) Designated recipient: Applicants and borrowers who request a review of adverse credit decision on loan applications and denials of restructuring applications.

(3) Timing: To be promptly provided after the decision is made, which decision is to be made in as expeditious a manner as is possible.

(4) Distribution: Not addressed in regulations. FCS of Fargo uses first class mail.

19. Notice of Transfer to Nonaccrual Status

a. Statutory and/or regulatory citation: Congressional—sec. 4.14D(d)(1) of the act (12 U.S.C. 2202d); FCA—section 614.4514(d) of the regulations (12 CFR sec. 614.4514).

b. Description of disclosure/notice requirement:

(1) Required information: If a qualified lender places any loan in nonaccrual status and such action results in an adverse action being taken against the borrower, the lender shall notify the borrower in writing of such action and the reasons therefor.

(2) Designated recipient: The information is to be sent to borrowers whose loans are placed in nonaccrual status and such action results in an adverse action being taken against them.

(3) Timing: The notice is to be sent promptly after the loan is placed in nonaccrual status.

(4) Distribution: Regulations do not appear to address. FCS of Fargo uses first class mail.

20. Notice of Right of First Refusal

a. Statutory and/or regulatory citation: Congressional—sec. 4.36(b)(1) of the act (12 U.S.C. 2219a); FCA—section 614.4522(c) of the regulations (12 CFR sec. 614.4522).

b. Description of disclosure/notice requirement:

(1) Required information: To be given upon an election to sell or lease acquired property (other than through a public auction): (a) the appraised fair market value of the property as established by an accredited appraiser, and (b) notice of the right: (1) to purchase the property at the appraised fair market value, and (2) to offer to purchase the property at a price less than the appraised value which offer must be received within 30 days of the notification. To be given upon an election to sell or lease acquired property through a public auction, competitive bidding process, or other public offering: (a) notice of the availability of the property, (b) the minimum amount, if any, required to qualify a bid as acceptable to the institution, and (c) any terms or conditions to which such sale or lease will be subject.

(2) Designated recipient: The former owner of the acquired property.

(3) Timing: To be given within 15 days of the decision to sell the property.

(4) Distribution: To be sent by certified mail.

21. Interest Rate Disclosure at Time of Stock Change

a. Statutory and/or regulatory citation: Congressional—does not appear to be a requirement. FCA—section 614.4367(d) of the regulations (12 CFR sec. 614.4367).

b. Description of disclosure/notice requirement:

(1) Required information: (1) The impact on the effective rate by disclosing the new effective interest rate or by a representative example, (2) the date on which the new rate is effective, and (3) a statement of the action(s) taken by the qualified lender that have resulted in the new effective interest rate.

(2) Designated recipient: Borrowers whose effective interest rate on a loan is modified by an action of a qualified lender which changes the amount of stock or participation certificates which borrower(s) are [is] required to own. In the case of a loan involving more than one primary obligor, the notice need be only sent to any one of such parties.

(3) Timing: At least 10 days before the date on which such action takes effect.

22. Pooled/Non-Pooled Loan Disclosure

a. Statutory and/or regulatory citation: Congressional—sec. 8.9(b) of the act (12 U.S.C. 2279aa-9). FCA—section 614.4367(b) of the regulations (12 CFR sec. 614.4367).

b. Description of disclosure/notice requirement:

(1) Required information: (a) Notification that the loan will or may be pooled; (b) notification that, if the loan will be pooled, the borrower will be required to execute, within 3 days of commitment, a waiver of his right to have the loan considered for restructuring, with a statement that rights, if any, under applicable State laws are not waived; (c) notification that the borrower has the right not to have the loan pooled; (d) notification that, within 3 days of commitment, the applicant has the right to refuse to allow the loan to be pooled, thereby retaining any restructuring rights later applicable to the loan; and (e) notification of any other term and conditions that may apply to a loan which will or may be pooled that differ from a loan which is not pooled.

(2) **Designated recipient:** Loan applicants whose loans, if approved, will or may be pooled for sale on the secondary market.

(3) **Timing:** To be given at the time of application.

IV. SUMMARY AND CONCLUSION

Individually, each disclosure requirement does not appear overwhelming, but collectively, as you can see from the attached Exhibit, they are. We encourage FCA and Congress to be cautious in considering any further disclosure/notice requirements. We already run the risk of FCS mailings being piled with the "junk mail." Furthermore, existing disclosure/notice requirements are already comprehensive in scope and detail.

Our only recommendation regarding present regulations is to reduce the quarterly reporting requirements to summary information that can be cost-effectively published in newspapers. More detailed information would be available upon request to any stockholders who want it.

Implementation of these changes will satisfy stockholders' financial information needs, enhance cost-effectiveness, reduce stockholder discontent with existing quarterly financial disclosure, and meet the intent of Congress regarding stockholder protection.

Date: April 25, 1989.

JAMES LINK,
Chairman, Board of Directors, Farm Credit Services of Fargo, ACA.
KENNETH C. KNUDSEN,
Vice President—Special Accounts, Farm Credit Services of Fargo, ACA.

[Attachments follow:]

V. EXHIBIT TO WRITTEN TESTIMONY: 1988 FCS OF FARGO DISCLOSURE TO SHAREHOLDERS AND NOTICE TO BORROWERS

Disclosure/notice requirement	No. of issues	No. of copies	No. of pages	Total pages	Cost/page	Total printing cost	Staff costs [1]	Postage costs [1]	Fargo's total cost	Estimate nationwide [2]
1 Annual report	1	3,550	36	127,800	$0.022	$2,811	$4,800	$800	$8,411	$1,261,622
1.5 Annual report/FCB	1	3,550	50	177,500	0.010	1,775	4,800	500	7,075	1,061,199
2 Quarterly report/PCA	3	1,200	6	21,600	0.028	600	480	225	1,305	195,750
2.5 Quarterly report/FLB	3	3,000	8	72,000	0.013	900	240	1,267	2,407	361,013
3 Annual meeting statement	1	3,550	8	28,400	0.057	1,629	1,200	639	3,468	520,200
4 Capital bylaws disclosure/PCA	1	1,232	6	7,392	0.031	230	480	308	1,018	152,700
5 Plan of merger disclosure	1	4,114	69	283,866	0.008	2,250	4,800	4,855	11,905	1,785,750
6 Equity purchase disclosure	2,000	1	4	8,000	0.050	400	200	500	1,100	165,000
7 Charter/articles/bylaws disclosure	2	1	42	84	0.050	4	12	2	18	2,700
8 Disc of list of stockholders	2	1	60	120	0.027	3	40	7	50	7,456
9 Notice of retirement of stock	50	1	2	100	0.050	5	400	1,250	1,655	248,250
10 Rate disclosures at closing	2,000	1	2	3,000	0.050	150	1,200	500	1,850	277,500

V. EXHIBIT TO WRITTEN TESTIMONY: 1988 FCS OF FARGO DISCLOSURE TO SHAREHOLDERS AND NOTICE TO BORROWERS—Continued

Disclosure/notice requirement	No. of issues	No. of copies	No. of pages	Total pages	Cost/page	Total printing cost	Staff costs [1]	Postage costs [1]	Fargo's total cost	Estimate nationwide [2]
11 Rate disclosure at change/PCA	3	1,200	1	3,600	0.050	180	90	900	1,170	175,500
11.5 Rate disclosure at change/FLB	2	3,000	1	6,000	0.050	300	90	1,500	1,890	283,500
12 Differential rate disclosure	100	1	2	200	0.050	10	500	25	535	80,250
13 Loan document disclosure	2,700	1	10	27,000	0.050	1,350	5,400	1,350	8,100	1,215,000
14 Appraisal disclosure	90	1	3	270	0.050	14	90	23	126	18,900
15 Notice of restructuring	252	1	14	3,528	0.050	176	750	554	1,481	222,120
16 Notice of action on restructure application	200	1	1	200	0.050	10	1,000	50	1,060	159,000
17 Notice of action on loan application	375	1	1	375	0.050	19	1,125	95	1,239	185,813
18 Notice of decision of Credit Review Committee	50	1	1	50	0.050	3	250	13	265	39,750
19 Notice of transfer to nonaccrual	149	1	1	149	0.050	7	750	38	795	119,243
20 Notice of right of first refusal	40	1	12	480	0.050	24	200	180	404	60,600
21 Rate disclosure at stock change	0	0	0	0	0.000	0	0	0	0	0
22 Pooled/nonpooled loan disclosure	0	0	0	0	0.000	0	0	0	0	0
Total				771,714		12,850	28,897	15,579	57,325	8,598,814

[1] Estimated.

[2] This column simply multiplies the cost of FCS of Fargo disclosure/notice by a factor representing the number of borrowers nationwide. The factor (150) was derived by dividing the number of System borrowers (600,000) by the total number of commercial (PCA) and mortgage (FLBA) borrowers at FCS of Fargo (approximately 4,000).

V. EXHIBIT TO WRITTEN TESTIMONY: RESOLUTION PASSED BY BOARD OF DIRECTORS

RESOLUTION TO REDUCE BURDENSOME FINANCIAL REPORTING REQUIREMENTS

WHEREAS, the board of directors and management of this institution understand and support the necessity of providing stockholders with full and complete information on the financial affairs of this institution, and

WHEREAS, the board and management understand and agree with their obligation to keep stockholders informed of significant events and transactions, and

WHEREAS, it is this board's understanding that the Farm Credit Administration is the only financial institution regulatory agency that requires the distribution of a complete set of financial statements to stockholders on a quarterly basis, and

WHEREAS, the Farm Credit Bank of St. Paul and Seventh District associations incur thousands of dollars in printing and mailing expenses related to the publication and distribution of quarterly and annual financial statements, and

WHEREAS, stockholders have expressed concerns to members of this board about the costs, the voluminous and technical nature of the reports, and the lack of clear, summarized information on the financial position and progress of this institution,

NOW THEREFORE BE IT RESOLVED, that the board of directors of Farm Credit Services of Fargo, ACA, strongly urges the Farm Credit Administration:

(1) to eliminate or modify the regulations that require the publication and distribution to shareholders of complete financial statements, including attendant footnote and disclosure documentation,

(2) to require only that summary balance sheet and income statement information be distributed to stockholders on a quarterly and annual basis,

(3) to permit publishing such summary balance sheet and income statement information in local newspapers,

(4) to allow those stockholders desiring to obtain complete financial statements with attendant footnotes and disclosures to obtain such information as desired by writing to a designated officer of this institution.

I, **Robert W. Orseth**, secretary of the Farm Credit Services of Fargo, ACA, do hereby certify that the above resolution was duly adopted by the board of directors at a meeting thereof held April 4, 1989.

Robert W. Orseth.

Farm Credit Services of
Northwest North Dakota, ACA,
Minot, ND.

MEMORANDUM

To: Senate Subcommittee on Agricultural Credit, Senator Kent Conrad, Chairman.
From: Farm Credit Services of Northwest North Dakota, ACA.
Re: Debtor Protection/Wednesday, April 26.
Date: April 24, 1989.

This is a written text from Farm Credit Services of Northwest North Dakota, ACA, to supplement an oral presentation to be made at a hearing on April 26, 1989, by Director Lyle McLain of our Board. By agreement with other North Dakota associations, our testimony is focused on debtor protections.

North Dakota and the Seventh District have supported the concept of restructuring of distressed loans if that does not cost any more than foreclosure. In fact, the North Dakota associations innovated a model restructure program with the Bank of North Dakota and were restructuring loans 1½ years before the ACA 87 was passed. For example, the Minot association had a volume of approximately $70 million unrestructured and nonaccrual loans as of June 30, 1986; less than 3 years later the volume of unrestructured and nonaccrual loans is less than $7 million.

With a substantial number of loan restructures completed, a majority of the loans we are now dealing with cannot be restructured or will not agree to restructuring. These are loans that have been delinquent for an average of 2 years and by alternating between ACA, bankruptcy, and State debtor protections have remained in nonaccrual status an average of 4 years, with a few as long as 5 or 6 years before they are resolved.

All North Dakota associations are working with the State Mediation program to restructure loans. Such mediation programs, to be effective, need participation of all lenders including private banks, FmHA, and Farm Credit. FmHA has increased costs to Farm Credit Associations in North Dakota by its refusal to release valueless liens, even after the borrower has restructured or deeded back.

Our members who are current on their loans are increasingly aware of the cost of these nonaccruals and that the cost is ultimately paid by the members. We, as directors, understand that the majority of this cost is due to bankruptcy laws and State debtor protection laws, but our members tend to blame the restructuring provisions in the ACA 87.

Other groups take the opposing position that Farm Credit Services can be very generous in granting restructures because we received $4 billion in financial aid to cover the cost. We, as directors, know that the Financial Assistance Board has sold less than $1 billion in bonds 15 months after the act was signed. The failure of the Financial Assistance Board to respond with necessary financial aid means that every dollar lost through restructure or foreclosure threatens the financial viability of the whole system. For example, our Minot association requested assistance (exhibit 1) and that request was denied (exhibit 2). Our Minot association has received no assistance for its restructure program.

We need some strong and clear communication from FCA, FAB, and our congressional offices to help us present a clear picture to our members and the general public regarding the benefits and costs of the ACA 87.

[Exhibit 1, letter from Daniel C. Mott, to Eric P. Thor, Jr., and exhibit 2, letter from Eric P. Thor, Jr., to Gerald Leeson, follow:]

[Exhibit 1]

DOHERTY, RUMBLE & BUTLER, PROFESSIONAL ASSOCIATION,
Saint Paul, MN, November 14, 1988.

Writer's direct dial number: 291-9310.

Mr. ERIC P. THOR, Jr.,
President and Chief Executive Officer, Farm Credit System Assistance Board, Washington, DC.

Re: Financial Assistance for Merging Associations.

DEAR MR. THOR: I am writing on behalf of 12 local associations in the St. Paul Farm Credit District (the "Associations") for the purpose of requesting a meeting with you and your staff to discuss the availability of financial assistance in connection with mergers of the Associations.

As you may know, there are eight separate mergers between PCA's and FLBA's currently under the consideration in the St. Paul District. Six of the eight Plans of Merger condition the effectiveness of the merger upon receipt of financial assistance which is intended to facilitate the mergers and assure economic viability of the resulting association. The Associations which have included the financial assistance condition, and the respective amount of financial assistance being requested, are as follows:

Service center	Financial assistance
Southeast Wisconsin	$5,700,000
Southwest Wisconsin	5,100,000
Madison	7,200,000
Mankato	15,000,000
Bismarck-Mandan	12,800,000
Minot	8,000,000

As you may recall, when you were in St. Paul to discuss financial assistance on the night of October 19, we discussed the financial assistance condition contained in the Plans of Merger of these Associations. At that time, you indicated a willingness to meet with representatives of the Associations to discuss possible financial assistance and the process associated with a formal request for certification. In light of the current FCA review of the Plans of Merger and the impending stockholder vote on those Plans, the Associations believe it is important to begin discussions with you and your staff regarding future financial assistance.

Accordingly, on behalf of the Associations, I am requesting the opportunity to meet with you and your staff within the next 2 weeks to discuss these issues. Our group would be happy to meet with you in Washington or any other location which is convenient. For your information, I would expect the following individuals to be present: Vern Aaroen, Adin Klevin, Dan Gorton, Maurice Kieffer, Jack Truwe, Herb Thorndal, Ralph Morris and myself. In anticipation of the meeting, I will be happy to provide you with any information concerning the Associations which you believe would be helpful. It may be helpful for you to review the Plan of Merger and related disclosure materials with respect to each of the Associations. Please let me know if you desire any of these documents prior to our meeting.

I would like to thank you in advance for your assistance in arranging this meeting. The Associations believe it will be extremely helpful to begin discussions concerning their needs for financial assistance and the expectations the Assistance Board will have with regard to the same. The Associations look forward to the opportunity to discuss these important issues with you. Should you have any questions or desire any additional information, please feel free to contact me at the above-referenced telephone number.

Sincerely,

DANIEL C. MOTT.

[Exhibit 2]

FARM CREDIT SYSTEM ASSISTANCE BOARD,
Washington, DC, March 13, 1989.

Mr. GERALD LEESON,
Chairman of the Board, Farm Credit Services of Minot, Minot, ND.

DEAR MR. LEESON: The Farm Credit Administration has informed the Farm Credit System Assistance Board that as of December 31, 1988, no Federal Land Bank Association (FLBA) in the Farm Credit District of St. Paul had stock, participation certificates or similar equities whose book value was below par or face value based on generally accepted accounting principles. Accordingly, the Northwest North Dakota FLBA is not eligible under section 6.4 of the Farm Credit Act of 1971, as amended, to be certified as eligible to issue preferred stock.

Sincerely,

ERIC P. THOR.

FARM CREDIT SERVICES OF BISMARCK-MANDAN,
Mandan, ND, May 8, 1989.

The Honorable KENT CONRAD,
U.S. Senate, Washington, DC.

DEAR SENATOR CONRAD: This letter is followup testimony for the Senate Field Hearing held in Bismarck on April 26.

Written testimony offered by North Dakota Agriculture Commissioner, Sarah Vogel, accuses Farm Credit Services of artificially inflating land values.

This is simply not what is happening. The value of farmland is determined by willing buyers and willing sellers. Farm Credit Service appraisers consider all sales considered to be "arms length" in its land value studies. This includes land sold by and financed by Farm Credit Services but also includes realtor sales, other lender sales, and private party sales. All sales are adjusted to a cash equivalent price to eliminate the affect of favorable financing.

During 1988, Farm Credit Service's acquired property sales in North Dakota averaged 103 percent of appraised value indicating that buyers, on the average, feel properties are appraised correctly. The southwest North Dakota appraiser used over 200 sales in his 1988 appraisals, with only 20 percent being FCS sales.

The Farm Credit Service land value index for North Dakota was not changed during 1987 and increased 5 percent in 1988.

The index for Michigan was not changed in 1987 and increased 1 percent in 1988. Wisconsin increased 3 percent in 1987 and went down 2 percent in 1988. Minnesota was the only State with significant two (2) year increase of 4 percent and 14 percent. Hopefully, these facts will show that Farm Credit Services is not "inflating" land values, but responding to real changes in value.

Artificially inflating or deflating land prices is detrimental to lenders, borrowers, sellers, and buyers.

Sincerely,

CHARLES MCCAY,
Public Affairs Officer.

HISTORY

LOAN LOSS RESERVES

December 31, 1986: PCA of Mandan had $3,839,000 in reserve for loan losses.

These were built over the years by contributions of up to one-half percent of year-end loan volume up to 3½ percent of total year-end loan volume. This procedure was required under regulatory accounting practices.

Tax laws allowed these reserves to accumulate through history with pretax dollars.

When losses were incurred, they would be deducted from the reserve but would not be tax deductible.

This methodology allowed for the accumulation of reserves rapidly during periods of moderate to low interest levels, only to be in place to carry the association through difficult drought years without extra interest burden on farmers to replenish loss reserves *or pay additional tax on contributions to the reserve*, thus causing higher interest rates on already overburdened farmers.

Under the *1986 Tax Act* when farmers and ranchers are being hit with extreme drought conditions, coupled with rapidly increasing interest rates, we are forced to additionally burden them with taxation on contributions to replenish loan loss reserves, *plus pay tax on contributions previously made.*

This tax on past contributions relates to $180 per year for 4 years or a total of $720 additional burden for each of our PCA members—or *4 basis points extra interest* each year to pay tax on these past contributions. Additionally, the membership must stand the taxation on current contributions to replenish the loan loss reserve account.

This is certainly an unfair tax on our cooperative, while the competition, small banks, are allowed to retain the tax-free status on loan loss reserves.

FCA COSTS

1989 FCA assessment to St. Paul District		$5,127,172
Cost per institution regulated (23 PCA's, 26 FLBA's, FCB, BC)		100,532
FDIC cost per institution regulated		18,200
Comptroller of Currency cost per institution		40,600
FCS of Bismarck-Mandan examination expense 1988		102,426
Cost per PCA borrower	$29.93	
Cost per FLBA borrower	22.48	
Total average cost for joint borrower	52.41	
FCS Bismarck-Mandan printing and mailing [1] 1988 expense for financial disclosures:		
Average PCA member	7.61	
Average FLBA member	10.50	
Total joint borrower	18.19	

[1] Does ***not*** include staff time for writing the information or for doing the printing, mailing, etc.

WRITTEN RESPONSE OF DEINO SATHER, ASSISTANT VICE PRESIDENT/SPECIAL ACCOUNTS, FARM CREDIT SERVICES BISMARCK/MANDAN TO HON. KENT CONRAD REGARDING TESTIMONY SUBMITTED TO THE 1989 SUBCOMMITTEE ON AGRICULTURAL CREDIT, JUNE 6, 1989

Farm Credit Services of Bismarck/Mandan, North Dakota (FCS) feels the need to respond to the written testimony submitted to the Subcommittee on Agricultural Credit.

MR. GERALD BOCK

Mr. Gerald Bock wrote what might appear to be a rather impressive-looking testimony with a considerable number of allegations. FCS would encourage your subcommittee to request additional information with the understanding that Mr. Bock's clients also provide written permission to FCS to submit the facts and circumstances surrounding their loans.

An interesting observation of Mr. Bock's introduction is that he left out the fact that he was employed as a N.D. State credit counselor. We would encourage your subcommittee to contact the N.D. Credit Review Board to investigate his performance as a credit counselor and reasons behind his eventual termination of employment by the State counseling department.

Mr. Bock indicates that the implementation of the act was lacking due to the request to fill out the financial information in the 48-day packet and propose a plan. He states that FCS did not communicate what an acceptable plan was. He would have preferred that FCS communicate what the "bottom line" was for the settlements with his clients. That clearly was not the intent of the act. He would have liked to know what restructure would be approved so that he could put together a projection that showed his client would service the restructured debt, regardless of whether the projection was realistic or not.

A similar situation occurred with one of his clients that was in bankruptcy. After valuation and interest rate had been determined, Mr. Bock requested that he be allowed to "rework" the cash-flow to show that his client could actually pay the increased debt and interest rate that resulted from valuation and interest rate. Bankruptcy Judge William Hill instructed Mr. Bock that as a "professional" farm management consultant, he should have put together the most realistic cash-flow of the operation, and to allow him to revise the cash-flow to accommodate the debt and terms set by the bankruptcy court was not acceptable. Basically, FCS took this same position by requiring the borrowers to compile the necessary financial information and submit a restructure application which could be analyzed to determine if the cost of foreclosure was less than the cost of restructure and if the borrower's proposal was actually the best that he could do. Mr. Bock would have preferred that we simply determine the cost of foreclosure and disregard the fact that the borrower could cash-flow a less costly restructure, or disregard whether a realistic cash-flow was being projected. We are sure that the intent of Congress was that the borrowers should pay back the maximum amount of debt that their operation could handle, thereby, reducing the cost to other stockholders.

Mr. Bock also eludes to the fact that FCS moved too quickly and that we should have waited for FmHA to have their regulations in place. Based on the fact that FmHA's regulations were not in place until late 1988, and implementation is still taking place, it was a good thing that FCS did not wait for FmHA to implement the provisions of the act.

For Mr. Bock to state that several of his clients were "unofficially" told that the act was perceived to be just another stumbling block to the foreclosure process, says nothing about FCS, as this statement was not made by any FCS representative, rather, they probably heard this statement from a "professional" consultant or attorney that was working with distressed borrowers.

Mr. Bock complains about communications and FCS's unwillingness to assist in developing acceptable restructure plans. The cover letter sent with the packet (see copy attached) specifically invites the borrower to meet with a FCS representative, to among other things, "possibly develop a plan for restructuring." Unfortunately, very few, if any, of Mr. Bock's clients requested such a meeting.

He cites two (2) cases out of 40–50 farmers that he has "assisted" in restructuring. That is interesting as FCS records show that those are probably the only two (2) loans that he has been the credit counselor on that have settled their loans outside of bankruptcy since the implementation of the act. Case 1 that he refers to was dismissed from bankruptcy due to the inability to demonstrate repayment ability and foreclosure was recommended. FCS actually had to request a meeting to discuss solutions to the problem as the borrowers and Mr. Bock appeared content to allow the foreclosure to proceed and eventually the borrowers would lose everything. A deedback was negotiated, which allowed the borrowers the exclusive right to repurchase the property for over 3 months at less than appraised value. Therefore, actually the borrowers had significantly more rights afforded them than the act provides, since the act allows 30–45 days to repurchase at appraised value. These borrowers were successful in obtaining an FmHA guaranteed loan to buy back the majority of their land. However, they were not able to exercise the repurchase of 480 acres of the land. Mr. Bock, FCS, and the borrowers, all knew that it was virtually impossible for these borrowers to buy back all the land due to his cash-flow. However, he wanted to try to arrange financing and was unable to do so. In regard to the leaseback rights, the lease of this property was never an issue, as the land was sold shortly after his repurchase period expired, so the land was never offered for lease.

He complains about our appraisals being "pumped up," however, the 480 acres discussed in Case 1 actually sold at a sealed bid auction for 120.7 percent of our alleged "pumped up" appraised value under a 20 percent downpayment, 9.75 percent, 5 year contract for deed. Discounting these terms for cash results is approximately a cash equivalent sale of 110 percent of appraised value.

FCS of Bismarck/Mandan does attempt to have the right of first refusal waived on deedbacks simply to eliminate the delay in being able to market the property. The reasoning is based on the fact that if they have the ability to exercise the right of first refusal within 30–45 days of the deedback, then we will allow them to cash out that portion of the security and not deed it back. In regard to leasing property, the majority of our acquired property that is leased, is leased back to the previous owner at market rates, unless they are not interested in leasing the land.

In summary, Mr. Bock would prefer to set policy and direction for Farm Credit Services that would result in settlements for his clients that are not equitable to the other FCS stockholders. To set aside any concerns that the subcommittee may have that FCS of Bismarck/Mandan is complying with the Agricultural Credit Act in good faith on his particular clients, we would ask that he expand on his allegations and provide authorization for FCS to discuss the circumstances surrounding the particular loan.

RAY AND BONNIE BIEBER

This letter basically provides some history on this borrower's operation and the dissolution of a family partnership. Also, they talk about their settlement negotiations with FCS.

The Biebers indicate that their proposal was to repay the debt in 11 years at 9 percent interest. They fail to state how much debt they were proposing to repay. Their proposal was for a very substantial debt write-down and the restructured debt remaining would be paid off in 11 years. Clearly, if a distressed borrower is requesting a substantial debt written off and low interest rates that result in his restructured debt being paid in full in eleven (11) years, the Restructure Cost/Foreclosure Cost computation will not support the restructure.

FCS has many paying stockholders who have debts that will require more than eleven (11) years to pay off, therefore, it would not be equitable to the other stockholders for FCS to compromise to the level requested by Biebers.

They failed to communicate that FCS did restructure approximately a $200,000 Farm Credit Bank loan at 9 percent fixed interest for 3 years with the rate changing to the variable rate that they were eligible for at that time. They deeded back a substantial portion of land to PCA to settle a large PCA debt, however, the land deeded back was not an integral part of the operation as it was virtually all in CRP and what was not in CRP was rented out. Therefore, FCS assisted the borrowers in retaining their home unit, which consisted of approximately 1,300 acres which was their main concern.

In summary, the settlement that was negotiated appears to be in the best interest of all parties and definitely provided the Biebers the opportunity to continue farming, as they did not actively operate the land that they deeded back to PCA anyway.

RONALD AND JANICE SWINDLER

The Swindlers state that FCS will not cooperate with them. We assume that statement to mean that FCS will not settle their loans in the manner which they want their loans settled. The reason for that is that they have not submitted an equitable proposal to date. Their allegations concerning bankruptcy stems from a negotiations session in the fall of 1987. The Swindlers and their credit counselor (Mr. Gerald Bock) threatened to file bankruptcy and they were informed that if that was the route that they wanted to take that FCS would deal with them in the bankruptcy court. Basically, we have always taken the approach that the threat of bankruptcy is not going to force FCS into settling a loan. The Swindlers have turned that statement around and contend that FCS encouraged them to file bankruptcy. The Swindlers had three (3) loans that they were responsible to FCS for. Two (2) of these loans have not had a payment made on them since the spring of 1986, therefore, they are delinquent on their 1987, 1988, and 1989 real estate payments. Due to the collection delays afforded by the State laws and the time involved in complying with the act, a foreclosure trial was not scheduled until December, 1988, at which time, they filed the bankruptcy that they had threatened in the fall of 1987. They continue to be unwilling to settle in an equitable manner, which leaves us no alternative but to settle in bankruptcy. The Swindlers and their attorney would like to negotiate a settlement in bankruptcy and then dismiss out, to avoid the costs associated to a bankruptcy, which we refuse to do. Basically, they want the benefits of bankruptcy for setting collateral valuation and interest rates but they do not want to pay the consequences of their bankruptcy filing.

They express concern that if they deed back land within the bankruptcy that they lose their right of first refusal. If their bankruptcy filing was in good faith and not simply a method of delaying the foreclosure process, then this should not be an issue since their operation evidently cannot handle the debt requirements associated to all of this land or they would have included that debt in their bankruptcy reorganization plan.

The only issue that remains to settle their loans (with a substantial debt writeoff) in the bankruptcy court, is the lease back of the land they are deeding back. FCS has agreed to lease back all of the cropland to Swindlers but the Swindlers want to also lease back the CRP acres for $16-$18 per acre when the CRP payment to be received this fall, are over $30 per acre. Obviously, their request is not equitable and mitting an application. The Federal land bank will review any suitable loan for restructuring only if an application is submitted and completed in its entirety.

The restructuring policy provides that you may meet with a representative of this Farm Credit institution to review: the status of your loan(s), your financial condition, the suitability of your loan(s) for restructuring, and possibly to develop a plan for restructuring. As stated above, you have 48 days from the date of this letter to submit an application; therefore, if you wish to meet to review your loan(s) status, you are advised to arrange that meeting as soon as possible to allow ample time to submit an application within the 48 day period stated above.

In order to facilitate consideration of your application for restructuring, please complete in their entirety, sign, date, and return the following to Darrin Schwagler, Farm Credit Services of Bismarck-Mandan, P.O. Box 199, Carson, North Dakota 58529 at the earliest possible date:

1. Application for Loan Restructure;
2. Balance Sheet, Balance Sheet Supporting Schedule, Income and Expense Statement, and Supplementary Information form;
3. Copies of the last 3 years income tax returns;
4. Sign and return the Request for Credit Information form (please note that this form may be photocopied and sent to your creditors);
5. Certification of Family Living Expenses; and
6. Affidavit of Financial Information Accuracy.

We have also attached a copy of a brochure on Farm Credit Counseling for your consideration. We have found in the past that this organization has been able to help some of our distressed borrowers.

If you are represented by legal counsel, please provide this information to your legal counsel.

If you have any questions regarding the restructuring policy or you wish to arrange a meeting, please contact Darrin Schwagler at 622-3297.

Sincerely,

DEINO SATHER,
Assistant Vice President—Special Accounts.

[EDITOR'S NOTE: The attached material referred to in this letter will not be a part of the printed hearing record.]

FARM CREDIT SERVICES,
St. Paul, MN, June 6, 1989.

The Honorable KENT CONRAD,
Chairman, Subcommittee on Agricultural Credit, Senate Committee on Agriculture, Washington, DC.

DEAR SENATOR CONRAD: On behalf of the Board and management of the Farm Credit Bank of St. Paul, we are happy to provide the following information as followup to questions which arose during your April 26 hearing in Bismarck.

Exhibit A contains specific responses to situations described by individual farmers at the hearing. We believe that by providing full facts a better understanding of why FCS took the actions it did in each case will be achieved. This material has been thoroughly researched by the service centers involved.

Exhibit B contains a fuller explanation of remarks made by Larry Buegler during his meeting with you on April 7 regarding costs attributable to the Agricultural Credit Act of 1987 and how that is a separate issue from the $2.35 figure he quoted as the cost we will have to repay for the Federal assistance.

Exhibit C outlines our policy regarding access by a borrower to his/her loan file.

Exhibit D relates to allegations of inconsistency in application of the borrowers' rights portion of the act among service centers. A major piece of this exhibit is an internal document based on one written and promulgated in February of 1988 which we have provided to your agricultural legislative assistant Kent Hall. Because this is an internal document, we do not believe it is appropriate to be included for public record. Highlighted are the revisions from the original and subsequent documents. You will note throughout a basic emphasis on consistency in application, yet also provision for some flexibility by the loan officer whenever he or she determines a borrower to warrant a special strategy. We believe this is an important part of the act and is consistent with congressional intent not to "micromanage" the System by so institutionalizing the regulations that each case cannot be given consideration based on its own unique merits.

FCS intends to sell the CRP land before the next payment is received to maximize the sale price. To lease back these CRP acres to Swindlers for approximately 50 percent of the guaranteed payment would be unreasonable and also hamper the attempts to market this property.

NOTE: The subcommittee should note that the preceding three testimonies are interrelated as follows: Mr. Gerald Bock is Ronald and Janice Swindler's credit counselor and Bonnie Bieber is Ronald Swindler's sister. This could help answer why they all have the same feelings toward FCS.

RAY AND ARLENE KRAMER

Mr. and Mrs. Kramer discuss some of the history behind their operation, however, they failed to disclose a major event in their farming operation. The other debts that they refer to in 1984 stemmed from a major loss incurred in a thoroughbred horse operation that he got involved in. This loss did have a very adverse effect on our lending relationship, as although PCA was very well collateralized, the cash-flow from his dairy operation was not sufficient to service the overall debt that resulted after this loss. Due to the collateral position of PCA, the bankruptcy court did not compromise either debt or interest rate on the PCA obligation.

The Kramers basically explain in their letter why PCA was unable to lend them additional money for feed. As they indicate, their operation does not generate sufficient income to service any additional debt. The monthly dairy assignment granted by the bankruptcy court, barely covers interest on the PCA obligation, so the principal debt basically remains the same. For PCA to lend the Kramers additional money without sufficient cash-flow to repay the debt, would not be in the best interest of the Farm Credit System, as this is not prudent lending practice.

The FmHA alternative was discussed with the Kramers when their request for additional money was denied due to the lower interest rates available. With lower interest rates, their operation would have a better chance for viability, however, even with less debt service requirements to FmHA, they could not project adequate repayment and were subsequently denied.

SUMMARY

If the subcommittee would like further information on any of these respondents or any others that they might receive, please feel free to contact us.

Farm Credit Services of Bismarck/Mandan is committed to restructuring loans or negotiating settlements that are equitable and in compliance with the Agricultural Credit Act of 1987.

It is unfortunate that you do not hear from the hundreds of farmer-borrowers who have been willing to settle equitably and have benefited from the restructuring process that has been in place in the St. Paul District long before the ACA of 1987 became law, or from the thousands of borrowers who are adequately servicing their debts.

DEINO SATHER,
Assistant Vice President/Special Accounts,
Farm Credit Services Bismarck/Mandan.

Enclosure.

FARM CREDIT SERVICES OF BISMARCK-MANDAN,
Mandan, ND, February 19, 1988.

[Deleted.]
North Dakota.

Re: Notice Pursuant to the 1987 Agricultural Credit Act Loan(s) Nos. 469863-3 and 433639-2.

DEAR MR. AND MRS. [DELETED.]: This letter is to notify you that, under provisions of the Agricultural Credit Act of 1987, your loan(s) may be a distressed loan(s), is in foreclosure, and may be eligible for restructuring. In order for us to determine whether your loan(s) is eligible for restructuring, you must submit a completed application and financial information as requested below within 48 days of the date of this letter.

Attached is a copy of the Seventh Farm Credit District's distressed loan restructuring policy and the forms necessary to complete and submit an application for restructuring. I suggest that you read the policy and the forms carefully before sub-

We have tried to pursue allegations of inconsistencies and, to date, have not received any specific cases which we could review. Kent Hall has indicated he'd follow up on some of those charges and provide specifics. If such instances are brought to your attention in the future, we request that you share them with us so we may follow up and respond to you accordingly.

Exhibit E responds to your question about our rates on FmHA guaranteed loans.

Exhibit F seeks to correct the misunderstandings that were expressed about whether or not the assistance package was intended to lower interest rates directly to farmers.

Exhibit G responds to questions raised about our appraisal procedures.

We request that the enclosed information be made a part of the official record of the hearing. We trust that you and your staff will have the opportunity to review its contents and, thereby, feel more confident that St. Paul District policies and procedures have consistently been in full compliance not only with the letter, but also the spirit, of the Agricultural Credit Act of 1987.

Should you or your staff have further concerns or questions about materials contained herein or other issues, please feel free to contact me.

Sincerely,

JUDITH M. GOFF,
Legislative Affairs Officer.

Enclosures.

[Exhibits A-F with attachments follow:]

[Exhibit A, Part 1]

FARM CREDIT SERVICES OF NORTHWEST NORTH DAKOTA, ACA, MINOT, NORTH DAKOTA

[(701) 852-1265]

Re: LeRoy Kalenze.

Both short (PCA) and long (FLBA) term loans were made to the Kalenzes in 1977. As early as 1978 the member's unit showed a decline in equity and was unable to meet loan performance on the PCA loan. The original PCA loan was made to pay off a credit company, providing operating credit and the financing of feeder calves in the amount of $357,138. The loan officer continued working with the member to make changes that would stop the decline in his equity position, but was unsuccessful. In June of 1979 the loan was classified as "Problem."

The Kalenzes filed bankruptcy in 1983 and a compromise agreement was completed in November, 1985, resulting in a loss to the PCA of approximately $166,000.

The Kalenzes defaulted on their FLBA loan payment for October 1, 1982, and April 1, 1983, respectfully, and then filed bankruptcy, which was not dismissed until May of 1985. FCS then filed the foreclosure notice and a sheriff's sale was scheduled for June, 1987, but the member again filed bankruptcy, forestalling the foreclosure process. The sheriff's sale was then rescheduled to be held in October of 1987, and we acquired the property in October of 1988 after the year of redemption had expired. We had not received any payments from the member since April of 1982 on the FLBA loan.

The member was given first right of refusal by parcel on all the Federal land bank acquired property and the member did purchase the homesite with 120 acres. The acquired property that had not been sold was leased to the Kalenzes for 1989.

LeRoy Kalenze applied for a short-term loan to finance the downpayment on additional land they wished to repurchase, and that loan application was denied. They requested an appeal hearing and that hearing was held on May 25, 1989. The appeal request was denied based on previous credit repayment history.

[Exhibit A, Part 2]

RESPONSE TO RAYMOND ZAJAC LETTER OF FEBRUARY 20, 1989, BY KENNETH D. BERGH, CEO, FARM CREDIT SERVICES OF FARGO, ACA

In addition to this response, I have attached my letter of August 10, 1988, to Senator Burdick on this same issue. This memo augments that letter. Obviously, at the time of my response to Senator Burdick I was not in receipt of this February 20 letter.

Since the previous letter, the borrower requested to be released from bankruptcy not because Federal land bank was requesting the same, but because he felt his opportunities with the bankruptcy judge would be limited and therefore, had more opportunity in the District and Eighth Circuit Courts. We are still stuck in the legal process because there has been no decision at the Eighth Circuit Court of Appeals, even though they have had this case for several months.

Each of the offers made by the borrower, whether for his loan,\ his brother's loan, his father's loan or any combination thereof, have not passed the least cost alternative test. In each case the cost of restructure is greater than the cost of foreclosure; therefore, it is obvious that we could not accept any of those proposals. We have offered several counterproposals that are within acceptable guidelines, and each of these has been rejected.

The entire matter pretty much centers around one key issue—the appraised value. In order to settle this dispute, in November of 1987, we offered to have three outside appraisers, that are accredited rural appraisers, and determine that value. Ray and Farm Credit would each pick one appraiser and those two appraisers would pick a third appraiser. The average of those three appraisals would become the appraised value, and based on that, we would set our cash-out and restructure proposals. That offer was not accepted by Mr. Zajac because he felt that if he disagreed with the appraisal that came about by that process that he would not be willing to restructure based on that value. It is interesting that that is the very issue he is suing us on now. We did not reoffer this opportunity in his denial of his restructure after the Ag Credit Act in 1988 because we were not required to at that time. His original proposal under the Ag Credit Act is so much more expensive than the cost of foreclosure that our appraised value would have to be considerably off target before his proposal would become close to acceptable.

The borrower also mentions that Federal land bank gave no instruction as to the cost of restructuring, the value of the land, etc. The act is clear, as is our packet that we send out, that the best way to put together any proposal is in conjunction with the loan officer. The consulting firm that Mr. Zajac went through made it very clear that they do not want their borrower or themselves to work with the loan officer in putting together any proposals. They made no attempt to contact us, even though our recommendations strongly encouraged that. Most of the restructures that end up being successfully completed are successful because of the up-front cooperation of loan officer and farmer.

We have made several attempts to resolve this account. You should be aware that the Fargo service center has restructured more loans than any other service center in the district, and was the first center to start restructuring. We started this process back in 1985 before the district even had such a program. We have a very small number of loans that actually end up in foreclosure because we have almost always been able to reach a settlement that is acceptable to both the farmer and us. We cannot accept proposals that are more expensive than other alternatives such as legal collection. Mr. Zajac has been given all of his borrower rights, and we have offered several acceptable proposals that he has denied. A review of this situation can only bring the conclusion that the borrower is unwilling to settle his account within the parameters that we can work.

We would be happy to supply you with any other information or answer any questions that you may have within the confidentiality rules that we have.

Attachment.

FARM CREDIT SERVICES,
St. Paul, MN, August 1(1988.

The Honorable QUENTIN N. BURDICK,
Senate Office Building, Washington, DC.

Re: Ray Zajac.

DEAR SENATOR BURDICK: We received your letter dated August 3, 1988, regarding Ray Zajac. In this letter we will attempt to outline what has occurred in the servicing of this loan.

The loan was originally made in 1980 and went delinquent on January 1, 1986. At that time the borrower was in dispute with his short-term creditor and indicated he was not going to pay Federal land bank. However, he indicated he wished to try to negotiate some type of settlement with Federal land bank at the end of the redemption period.

The 30-day notice was sent out on October 1, 1986. The Summons and Complaint was sent to the borrower in November of 1986. The borrower answered the Summons and Complaint based upon the confiscatory price defense. The trial on the confiscatory price issue was held on November 9, 1987. The court decided this case in favor of Federal land bank.

The Ag Credit Act of 1987 came into effect at this time, so the borrower was provided with an opportunity to apply for a restructure under the Ag Credit Act. He was sent a copy of our restructure policy along with all of the necessary forms to submit an application.

The borrower submitted a proposal that Federal land bank restructure its debt at 63 percent of the appraised value of the property. The cost to Farm Credit Services of the proposed restructure was substantially higher than the cost of foreclosure and, as required by the Ag Credit Act, Federal land bank had to accept the least costly alternative, which was to continue with the foreclosure.

Mr. Zajac requested a review of the denial to the Credit Review Committee on April 25, 1988. An appeal hearing was held, and the Credit Review Committee notified Mr. Zajac on April 26, 1988, that the loan officer's conclusion that the cost of restructuring the loans under his proposal was greater than the cost of foreclosure, and thus the decision to deny the restructure request was upheld.

Federal land bank then received an order from the court confirming judgment on May 6, 1988, and Federal land bank was proceeding to execute the Sheriff's Sale. The borrower then made a motion to the Supreme Court of North Dakota for a stay of the execution. This motion was denied.

The Sheriff's Sale was scheduled for July 20, 1988. On approximately July 8, 1988, the Zajacs filed an action in Federal court primarily dealing with the allegation that Federal land bank had not properly analyzed and/or properly handled their restructure request under the 1987 Farm Credit Act. The Federal court ruled in favor of Federal land bank on July 19, 1988. After this decision, the borrower then proceeded to file chapter 12 bankruptcy.

In addition to providing the borrower with the opportunity to request a restructure, we had made several offers for settlement to the borrower, none of which were accepted.

As you can see, we have made a substantial effort to try to resolve this account. The borrower was provided with the opportunity to apply for a restructure, and an appeal hearing was held before the Credit Review Committee to ensure that the proper procedures had been followed in analyzing the borrower's restructure request. The restructure request was also reviewed in Federal court, and it was again determined that Federal land bank had followed the proper procedures.

We hope this letter answers any questions you may have regarding this matter.

Sincerely,

Farm Credit Services of Fargo,
Kenneth D. Bergh,
Chief Executive Officer.

[Exhibit A, Part 3]

Farm Credit Services of Grand Forks,
Grand Forks, ND, April 28, 1989.

Hon. Kent Conrad,
Senate Dirksen Office Building, Washington, DC.

Dear Senator Conrad: The contents of this letter are in followup to the Senate Field Hearing on the implementation of the Agricultural Credit Act of 1987 which was held Wednesday, April 26, 1989, at the Heritage Center Auditorium in Bismarck, North Dakota.

During the hearing Mr. Donald Orwick from Michigan, ND raised a question and complaint regarding the method by which he was provided his statutory right of First Refusal under the Agricultural Credit Act of 1987. This letter will provide the facts and actions taken by Farm Credit Services to properly offer Mr. Orwick his Right of First Refusal.

Foreclosure commenced on Mr. Orwick's loan in July 1985, with a Sheriffs sale held April 21, 1987. Federal land bank became the legal owner of the property on April 21, 1988 when the 1 year redemption period had expired. Prior to the Sheriffs sale Federal land bank had entered into an agreement with Mr. Orwick to give him his homestead and surrounding acreage, totaling approximately 80 acres. In consideration Orwick provided FLB an assignment of the cash rent proceeds he was receiving on the foreclosed property. That rental agreement was honored for the years 1987 and 1988.

On June 1, 1988, Federal land bank offered to Mr. Orwick the opportunity to purchase all or a portion of the foreclosed property at the appraised fair market value of $212,900. The offer contained both the mandatory sale requirement, indicating that we must sell the property back to him for the appraised value if he offered to purchase it within 30 days along with the permissive sale provision indicating that he may offer a lower price and that Federal land bank has the option to accept or reject his offer.

Mr. Orwick did *not* make *any* offer to purchase the property, either at appraised value or at a lower figure, during this 30 day time period.

In September 1988 we placed an advertisement in local county papers indicating that the property was for sale and that offers would be considered until October 21, 1988. During this time we received offers from seven (7) different parties, including Don Orwick. We then reviewed each of the offers and accepted an offer for $221,200 on the entire unit, which represented the highest offer received on the farm unit. Since Mr. Orwick's right of first refusal had been previously provided and extinguished with the June offer, we proceeded to sell to the third party, as FCA regulations and the Agricultural Credit Act of 1987 permit.

You will note that, in spite of Mr. Orwick's accusations, he did have the opportunity to repurchase his property, at a figure even lower than our eventual sale price. He failed to take appropriate action and we undertook our obligation to maximize return to our stockholders on this property.

This information should provide you with a clear picture of the background on this case. If there is any additional information you desire please feel free to contact me.

Sincerely,

Ross Olson,
Senior Vice President.

[Exhibit A, Part 4]

Farm Credit Services of Bismarck/Mandan, North Dakota (FCS) feels the need to respond to the written testimony submitted to the Subcommittee on Agricultural Credit.

MR. GERALD BOCK

Mr. Gerald Bock wrote what might appear to be a rather impressive-looking testimony with a considerable number of allegations. FCS would encourage your subcommittee to request additional information with the understanding that Mr. Bock's clients also provide written permission to FCS to submit the facts and circumstances surrounding their loans.

An interesting observation of Mr. Bock's introduction is that he left out the fact that he was employed as a N.D. State credit counselor. Your subcommittee might want to contact the N.D. Credit Review Board to investigate his performance as a credit counselor.

Mr. Bock indicates that the implementation of the act was lacking due to the request to fill out the financial information in the 48-day packet and propose a plan. He states that FCS did not communicate what an acceptable plan was. He would have preferred that FCS communicate what the "bottom line" was for the settlements with his clients. That clearly was not the intent of the act. He would have liked to know what restructure would be approved so that he could put together a projection that showed his client would service the restructured debt, regardless of whether the projection was realistic or not.

A similar situation occurred with one of his clients that was in bankruptcy. After valuation and interest rate had been determined, Mr. Bock requested that he be allowed to "rework" the cash-flow to show that his client could actually pay the increased debt and interest rate that resulted from valuation and interest rate. Bankruptcy Judge William Hill instructed Mr. Bock that as a "professional" farm management consultant, he should have put together the most realistic cash-flow of the operation, and to allow him to revise the cash-flow to accommodate the debt and terms set by the bankruptcy court was not acceptable. Basically, FCS took this same position by requiring the borrowers to compile the necessary financial information and submit a restructure application which could be analyzed to determine if the cost of foreclosure was less than the cost of restructure and if the borrower's proposal was actually the best that he could do. Mr. Bock would have preferred that we simply determine the cost of foreclosure and disregard the fact that the borrower could cash-flow a less costly restructure, or disregard whether a realistic cash-flow was being projected. We are sure that the intent of Congress was that the borrowers should pay back the maximum amount of debt that their operation could handle, thereby, reducing the cost to other stockholders.

Mr. Bock also eludes to the fact that FCS moved too quickly and that we should have waited for FmHA to have their regulations in place. Based on the fact that FmHA's regulations were not in place until late 1988, and implementation is still taking place, it was a good thing that FCS did not wait for FmHA to implement the provisions of the act.

Mr. Bock stated, "unofficially, several of my clients were told that the act was perceived by FCS officials to be 'just another stumbling block to the foreclosure process.'" Mr. Bock does not indicate who told his clients this. We believe this statement was not made by any FCS representative, as FCS written policy and procedure clearly documents that the act is a means of settling loans without foreclosing. However, they might have heard this statement from a credit counselor or attorney that was working with distressed borrowers while communicating his perception of FCS.

Mr. Bock complains about communications and FCS's unwillingness to assist in developing acceptable restructure plans. The cover letter sent with the packet (see copy attached) specifically invites the borrower to meet with a FCS representative, to among other things, "possibly develop a plan for restructuring." Unfortunately, very few, if any, of Mr. Bock's clients requested such a meeting.

He cites two (2) cases out of 40-50 farmers that he has "assisted" in restructuring. That is interesting as FCS records show that those are probably the only two (2) loans that he has been the credit counselor on that have settled their loans outside of bankruptcy since the implementation of the act. Case 1 that he refers to was dismissed from bankruptcy due to the inability to demonstrate repayment ability and foreclosure was recommended. FCS actually had to request a meeting to discuss solutions to the problem as the borrowers and Mr. Bock appeared content to allow the foreclosure to proceed and eventually the borrowers would lose everything. A deedback was negotiated, which allowed the borrowers the exclusive right to repurchase the property for over 3 months at less than appraised value. Therefore, actually the borrowers had significantly more rights afforded them than the act provides, since the act allows 30-45 days to repurchase at appraised value. These borrowers were successful in obtaining an FmHA guaranteed loan to buy back the majority of their land. However, they were not able to exercise the repurchase of 480 acres of the land. Mr. Bock, FCS, and the borrowers, all knew that it was virtually impossible for these borrowers to buy back all the land due to his cash-flow. However, he wanted to try to arrange financing and was unable to do so. In regard to the leaseback rights, the lease of this property was never an issue, as the land was sold shortly after his repurchase period expired, so the land was never offered for lease.

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Their proposal was for a very substantial debt write-down and the restructured debt remaining would be paid off in 11 years. Clearly, if a distressed borrower is requesting a substantial debt written off and low interest rates that result in his restructured debt being paid in full in eleven (11) years, the Restructure Cost/Foreclosure Cost computation will not support the restructure.

FCS has many paying stockholders who have debts that will require more than eleven (11) years to pay off, therefore, it would not be equitable to the other stockholders for FCS to compromise to the level requested by Biebers.

They failed to communicate that FCS did restructure approximately a $200,000 Farm Credit bank loan at 9 percent fixed interest for 3 years with the rate changing to the variable rate that they were eligible for at that time. They deeded back a substantial portion of land to PCA to settle a large PCA debt, however, the land deeded back was not an integral part of the operation as it was virtually all in CRP and what was not in CRP was rented out. Therefore, FCS assisted the borrowers in retaining their home unit, which consisted of approximately 1,300 acres which was their main concern.

In summary, the settlement that was negotiated appears to be in the best interest of all parties and definitely provided the Biebers the opportunity to continue farming, as they did not actively operate the land that they deeded back to PCA anyway.

RONALD AND JANICE SWINDLER

The Swindlers state that FCS will not cooperate with them. We assume that statement to mean that FCS will not settle their loans in the manner which they want their loans settled. The reason for that is that they have not submitted an equitable proposal to date. Their allegations concerning bankruptcy stems from a negotiations session in the fall of 1987. The Swindlers and their credit counselor (Mr. Gerald Bock) threatened to file bankruptcy and they were informed that if that was the route that they wanted to take that FCS would deal with them in the bankruptcy court. Basically, we have always taken the approach that the threat of bankruptcy **is not** going to force FCS into settling a loan. The Swindlers have turned that statement around and contend that FCS encouraged them to file bankruptcy. The Swindlers had three (3) loans that they were responsible to FCS for. Two (2) of these loans have not had a payment made on them since the spring of 1986, therefore, they are delinquent on their 1987, 1988, and 1989 real estate payments. Due to the collection delays afforded by the State laws and the time involved in complying with the act, a foreclosure trial was not scheduled until December, 1988, at which time, they filed the bankruptcy that they had threatened in the fall of 1987. They continue to be unwilling to settle in an equitable manner, which leaves us no alternative but to settle in bankruptcy. The Swindlers and their attorney would like to negotiate a settlement in bankruptcy and then dismiss out, to avoid the costs associated to a bankruptcy, which we refuse to do. Basically, they want the benefits of bankruptcy for setting collateral valuation and interest rates but they do not want to pay the consequences of their bankruptcy filing.

They express concern that if they deed back land within the bankruptcy that they lose their right of first refusal. If their bankruptcy filing was in good faith and not simply a method of delaying the foreclosure process, then this should not be an issue since their operation evidently cannot handle the debt requirements associated to all of this land or they would have included that debt in their bankruptcy reorganization plan.

The only issue that remains to settle their loans (with a substantial debt writeoff) in the bankruptcy court, is the leaseback of the land they are deeding back. FCS has agreed to lease back all of the cropland to Swindlers but the Swindlers want to also lease back the CRP acres for $16–$18 per acre when the CRP payment to be received this fall, are over $30 per acre. Obviously, their request is not equitable and FCS intends to sell the CRP land before the next payment is received to maximize the sale price. To lease back these CRP acres to Swindlers for approximately 50 percent of the guaranteed payment would be unreasonable and also hamper the attempts to market this property.

NOTE: The subcommittee should note that the preceding three testimonies are interrelated as follows: Mr. Gerald Bock is Ronald and Janice Swindler's credit counselor and Bonnie Bieber is Ronald Swindler's sister. This could help answer why they all have the same feelings toward FCS.

RAY AND ARLENE KRAMER

Mr. and Mrs. Kramer discuss some of the history behind their operation, however, they failed to disclose a major event in their farming operation. The other debts that they refer to in 1984 stemmed from a major loss incurred in a quarterhorse operation that he got involved in. This loss did have a very adverse effect on our lending relationship, as although PCA was very well collateralized, the cash-flow from his dairy operation was not sufficient to service the overall debt that resulted after this loss. Due to the collateral position of PCA, the bankruptcy court did not compromise either debt or interest rate on the PCA obligation.

The Kramers basically explain in their letter why PCA was unable to lend them additional money for feed. As they indicate, their operation does not generate sufficient income to service any additional debt. The monthly dairy assignment granted by the bankruptcy court, barely covers interest on the PCA obligation, so the principal debt basically remains the same. For PCA to lend the Kramers additional money without sufficient cash-flow to repay the debt, would not be in the best interest of the Farm Credit System, as this is not prudent lending practice.

The FmHA alternative was discussed with the Kramers when their request for additional money was denied due to the lower interest rates available. With lower interest rates, their operation would have a better chance for viability, however, even with less debt service requirements to FmHA, they could not project adequate repayment and were subsequently denied.

SUMMARY

If the subcommittee would like further information on any of these respondents or any others that they might receive, please feel free to contact us.

Farm Credit Services of Bismarck/Mandan is committed to restructuring loans or negotiating settlements that are equitable and in compliance with the Agricultural Credit Act of 1987.

It is unfortunate that you do not hear from the hundreds of farmer- borrowers who have been willing to settle equitably and have benefited from the restructuring process that has been in place in the St. Paul District long before the ACA of 1987 became law, or from the thousands of borrowers who are adequately servicing their debts.

DEINO SATHER,
Assiant Vice President/Special Accounts,
Farm Credit Services, Bismarck/Mandan.

Enclosure.

FARM CREDIT SERVICES OF BISMARCK-MANDAN,
Mandan, ND, February 19, 1988.

[Deleted.]
North Dakota.

Re: Notice Pursuant to the 1987 Agricultural Credit Act Loan(s) Nos. 469863-3 and 433639-2.

DEAR MR. AND MRS. [DELETED.]: This letter is to notify you that, under provisions of the Agricultural Credit Act of 1987, your loan(s) may be a distressed loan(s), is in foreclosure, and may be eligible for restructuring. In order for us to determine whether your loan(s) is eligible for restructuring, you must submit a completed application and financial information as requested below within 48 days of the date of this letter.

Attached is a copy of the Seventh Farm Credit District's distressed loan restructuring policy and the forms necessary to complete and submit an application for restructuring. I suggest that you read the policy and the forms carefully before submitting an application. The Federal land bank will review any suitable loan for restructuring only if an application is submitted and completed in its entirety.

The restructuring policy provides that you may meet with a representative of this Farm Credit institution to review: the status of your loan(s), your financial condition, the suitability of your loan(s) for restructuring, and possibly to develop a plan for restructuring. As stated above, you have 48 days from the date of this letter to submit an application; therefore, if you wish to meet to review your loan(s) status, you are advised to arrange that meeting as soon as possible to allow ample time to submit an application within the 48 day period stated above.

In order to facilitate consideration of your application for restructuring, please complete in their entirety, sign, date, and return the following to Darrin Schwagler, Farm Credit Services of Bismarck-Mandan, P.O. Box 199, Carson, North Dakota 58529 at the earliest possible date:

1. Application for Loan Restructure;
2. Balance Sheet, Balance Sheet Supporting Schedule, Income and Expense Statement, and Supplementary Information form;
3. Copies of the last 3 years income tax returns;
4. Sign and return the Request for Credit Information form (please note that this form may be photocopied and sent to your creditors);
5. Certification of Family Living Expenses; and
6. Affidavit of Financial Information Accuracy.

We have also attached a copy of a brochure on Farm Credit Counseling for your consideration. We have found in the past that this organization has been able to help some of our distressed borrowers.

If you are represented by legal counsel, please provide this information to your legal counsel.

If you have any questions regarding the restructuring policy or you wish to arrange a meeting, please contact Darrin Schwagler at 622-3297.

Sincerely,

DEINO SATHER,
Assistant Vice President—Special Accounts.

[EDITOR'S NOTE: The attached material referred to in this letter will not be a part of the printed hearing record.]

[Exhibit B]

ISSUE: Respond to remark—"For every $1 in financial assistance it costs Farm Credit $2.35."

This figure is a quote from one of the Financial Assistance Board members. Our calculations would support a similar repayment cost.

The Agricultural Credit Act of 1987 provides that all financial assistance provided to Farm Credit System institutions must eventually be repaid, with interest. Thus, much like a house mortgage, the total amount to be repaid substantially exceeds the principal amount of the assistance received.

We believe there is an economic benefit for an *individual* Farm Credit institution receiving assistance which results from two factors:

1. *All* System institutions must share in the repayment of interest and, depending on the type of assistance, may also share in repaying the principal amount of the assistance received.
2. The time value use of the assistance funds. The portion of the interest paid by the U.S. Treasury in years 1-10 and all of the principal is not required to be repaid until the year 2003.

Larry Buegler also addressed the costs of the Agricultural Credit Act of 1987, as it pertains to this District. His point was that while we have received, and have utilized Federal assistance in a positive fashion, had the act not been passed, the District would not be carrying additional costs relating to the new insurance fund, borrower rights and increased oversight and regulation by the Farm Credit Administration. It is also questionable whether the FLB of Jackson needed to be liquidated at a cost of $450 million to the System. In addition, the legislation has given the Funding Corporation new powers to determine conditions of participation which could also be costly to the St. Paul District.

These are two separate issues.

[Exhibit C]

ISSUE: Loan File Access.

A borrower is provided a copy of all loan documents when the loan is executed. These loan documents include any forms, applications, agreements, contracts, instruments or other writing which the borrower has signed (12 CFR 618.8340). In addition, a borrower may request in writing at anytime copies of loan documents signed by the borrower, copies of other documents delivered by the borrower to the lender and a copy of each appraisal of the borrower's assets made or used by the lender.

In addition to having access to all of the loan file information listed above, each lender promptly notifies an applicant of the action on their application, including the reasons for the action.

Remaining information in the loan file is usually loan officer work product, such as analyses, worksheets, servicing plans/updates, etc. This information is for internal use of the lender and is not prepared for distribution.

Providing borrowers with copies of documents they have signed or provided is consistent with the practice of other financial institutions. We are unaware of any financial institution which permits complete access to a borrower of his/her loan file.

[Exhibit D]

ISSUE: Inconsistencies.

It is difficult to understand exactly how allegations of inconsistencies between service centers in the implementation of restructuring can be determined. Farm Credit Services treats each individual loan separately, based on some clearly defined guidelines established by the District. Furthermore, because no one loan is considered by more than one service center, it would be difficult to prove that there is inconsistency in application of loan restructuring consideration.

We are concerned by any such perception, however, and have sought to follow up on those quoted as having such concerns. For instance, we called Karl Limvere, Alan Bergman's key staffer at North Dakota Farmers Union, and asked about whether or not they were getting reports of "inconsistencies in application of the act from one service center to another." The following summarizes his response:

1. Most of his information now comes from the farm credit counselors; since the availability of counselors has become better known, the complaint calls to NDFU have declined.

2. Two major observations he's receiving—CONSISTENT ACROSS THE STATE:

—FCS won't INITIATE mediation requests. They'll inform borrower of availability but won't pursue/push him/her into mediation. Observation is that it would most often benefit us and the process if we were more aggressive in initiating this process, "particularly in cases of those guys hyping the media and playing games, because you could put it onto the mediators."

NOTE: Subsequently, one of our Bismarck employees spoke with Sarah Vogel on this issue, citing the confidentiality factor. We're concerned that if we initiate mediation requests, we might be liable to suit from borrower for using confidential information and giving it out to others. While ND State law has given immunity on this issue, Federal law doesn't. Therefore, we'll continue to inform borrower of availability of mediation, but not unilaterally initiate it. This position has been supported by State agencies who have been informed of it.

—Reluctance to share restructuring formula, though this complaint is less frequently heard these days.

3. If we reread Alan's testimony we see a major concern over FCA, rather than with FCS. Concern was with FCA's not putting out timely regulations and guidance and, most particularly, the volumes of paperwork required in disclosure. Never has Karl seen such frustration from farmers who receive "encyclopedias of paperwork" relating to stock, interest, etc. requirements.

OVERALL OBSERVATION: Farmers Union responded that inconsistency between service centers was not an issue of concern to them.

Farm Bureau provided a similar response, but added that Senator Conrad was surprised at amount of testimony criticizing FCS. To date, State Mediation Service has not responded with specific inconsistencies.

[Exhibit E]

ISSUE: "Why is FCS charging the high risk rate on FmHA guaranteed loans?"

Farm Credit Bank of St. Paul staff has been working with the four State FmHA offices within the District to determine the interest rate on guaranteed real estate loans. Regulations recently changed and now indicate: "The interest rate on loans made by a Farm Credit System member institution . . ." (in this case the FCB of St. Paul on real estate loans) ". . . will be a fixed or variable rate based on their *administrative and borrowing costs.*" Borrowing costs are our cost of funds. Administrative costs are not defined in the regulations, but we believe we have an agreement with FmHA that they include:

—Cost of Farm Credit System Insurance Corporation;

—Credit risk (allowance for losses);

—Funding risk;

—FCB of St. Paul operating expenses;
—ACA or FLBA (as agents) operating expenses;
—Regulatory risk capital requirements; and
—Servicing costs on FmHA guarantees.

As of May 1, 1989, the administrative and borrowing costs totaling 12.50 percent compares with our Tier II or middle interest rate. We recognize the value of FmHA guarantees for our borrowers and our institutions. On a 90 percent FmHA guarantee, FmHA would absorb 90 percent of the loss. We also need to generate sufficient earnings on our loans to meet business plan objectives, which include building our capital position to meet regulatory requirements and repaying our financial assistance.

Attached is a copy of the letter sent to the four State directors for your information.

[The attached letter follows:]

Farm Credit Services,
St. Paul, MN, May 5, 1989.

Mr. Russ Bjorhus,
State Director, Minnesota FmHA, St. Paul, MN.

Mr. Ron Caldwell,
State Director, Wisconsin FmHA, Stevens Point, WI.

Mr. Ralph Leet,
State Director, North Dakota FmHA, Bismarck, ND.

Mr. Calvin Lutz,
State Director, Michigan FmHA, East Lansing, MI.

Subject: FCB interest rates for guaranteed real estate loans.

Gentlemen: I have been working with Chuck Wallin from the Wisconsin State FmHA office to clarify what is an acceptable FCB interest rate for guaranteed loans. Some of you raised concerns about the 12.90 percent interest rate as communicated in my memo of March 27, 1989. Regulations indicate that, "The interest rate on loans made by a Farm Credit System member institution . . ." (in this case FCB of St. Paul on real estate loans) ". . . will be a fixed or variable rate *based on their administrative and borrower costs.* Variable rates may change according to the normal practices of the lender for its average farm customers, but frequency of change must be set forth in the loan/line of credit instrument."

We have reevaluated our documented support for the FCB of St. Paul interest rates for FmHA guaranteed real estate loans for the second quarter (now through June 30, 1989) and provide it as follows:

Cost of insurance (Farm Credit System Insurance Corporation)	.15
Credit risk (allowance for losses)	.20
Funding risk	.50
FCB of St. Paul operating expense	.32
ACA or FLBA (as agents) operating expenses	.68
Regulatory risk capital and market access requirements	.50
Servicing costs on FmHA guarantees	.35
Total administrative costs	2.70
Costs of funds (March 31, 1989)	9.80
FCB interest rate on FmHA guaranteed loans	12.50

This is 40 basis points lower than the previously stated 12.90 percent interest rate for the second quarter.

Our current Tier II variable rate is 12.25 percent (as of 5/1/89), and our Tier II, 3-year ARM (adjustable rate mortgage) interest rate is at 12.60 percent for May 1989. (Most of the F.O. guarantees are written using the 3-year ARM; therefore, we believe the 12.50 percent rate is reasonable and comparable to the average interest rate charge on nonguaranteed loans.)

Our plan is to continue to provide this information quarterly to the State FmHA offices. Individual PCA's and ACA's will continue to work with you directly in documenting their rate.

Please notify your county offices on this rate. Contact me if you have questions.

Sincerely,

EUGENE M. FLEMMING,
Director, District Producer Credit/Special Assets.

[Exhibit F]

ISSUE: North Dakota Department of Agriculture Communication to Senator Conrad questioning—"Why FCS raised interest rates on October 1, 1988, after applying for financial assistance?" and "The validity of FCS' increasing interest rates by 1 percent between January and May, 1989?"

Under the Farm Credit Act, the Financial Assistance Board (FAB) may certify Farm Credit institutions to receive financial assistance to protect borrower stock, assist in returning to economic viability and provide credit at reasonable and competitive interest rates.

As a condition of receiving financial assistance, the FCB of St. Paul was specifically prohibited from using the assistance funds solely to reduce interest rates—as opposed to enhancing the Bank's return to economic viability.

Virtually all of the funds loaned by the FCB to farmers and ranchers have been borrowed in the public money markets. Market interest rates and, therefore, the Bank's cost of money rose throughout 1988 and into 1989. Regulatory requirements along with safe and sound banking practices dictate that FCB loan rates track with the market cost of funds to avoid operating losses and a deterioration in the Bank's financial condition.

This is the rationale for increasing loan rates 1 percent in early 1989 even after the Bank received financial assistance.

[Exhibit G]

ISSUE: 1988 North Dakota Segregated Land Sales.

Recently there have been allegations that Farm Credit appraisers have been artificially raising values to the point that former borrowers in North Dakota have been unable to exercise their first right of refusal. An unproven assumption in these allegations is that the "high" sales prices received by Farm Credit Banks on their contract sales are, by themselves, boosting appraised values on first right of refusal.

In an effort to investigate this charge, we first examined acquired property data. Here we were able to learn something about the relationship of sale prices to the appraised value for each FCB property sold. Studying all Farm Credit sales occurring in North Dakota in 1988 indicated the following:

	Number	Sale price/AV (percent)
FCB cash sales	211	96.6
FCB land contract sales	323	106.8
Total FCB sales	534	103.1

When one discounts for average interest rates of 9.25 percent on the contract sales, one can conclude that FCB appraisers are in step with the market.

The next step in our analysis was to segregate FCB sales from those transacted by types of sellers. A very good sample of all the transactions in the State were recorded. We compared these at the State level and found the following:

	Number	Bareland average price per acre
FCB farm sales	299	$312
Other farm sales	656	343

On a county by county basis we discovered average bareland farm sale prices received by others were greater in 35 counties, less in 11 counties; with 7 counties on which comparisons could not be made.

Analysis of these two bodies of data fails to reveal any basis for the allegations. We refer you to the testimony presented in Bismarck by Bruce Bohnsack for a more detailed outline of how former owners are apprised of their right of first refusal on purchase of acquired properties.

FARM CREDIT SERVICES OF GRAND FORKS,
Grand Forks, ND, April 28, 1989.

The Honorable KENT CONRAD,
Senate Dirksen Office Bldg., Washington, DC.

DEAR SENATOR CONRAD: Thank you for the opportunity to attend the Senate Agricultural Credit Subcommittee in Bismarck this week. I felt that the hearing was interesting and informative, and that many good issues were raised that need further clarification and investigation both for FmHA and for Farm Credit.

Had the meeting not run so late I would have taken the microphone to explain the contents of this letter. I hope the letter will become a part of the permanent record, which you indicated would be kept open for an additional time.

The Production Credit Association of Grand Forks is the only individual association in the Seventh District that qualified for direct assistance from the Farm Credit Assistance Board. We filed the requested forms for certification on January 26, 1988. From April until midsummer we negotiated directly with Eric Thor, president of the Farm Credit Assistance Board and Jack Cannady, vice president. Those negotiations included two trips to Grand Forks by Mr. Cannady, field trips to farms to view drought conditions and extensive verbal and written updates by our staff on the financial condition and history of the Production Credit Association of Grand Forks.

During that time we submitted five different computer business plans at the board's request. The maximum request was for $16 million, $8 million of which would have been used to directly reduce interest rates to our borrowers. At the Grand Forks Association, $8 million would have reduced interest rates 1 percent to all PCA borrowers, and would have made the association fully competitive with community banks and savings and loans that were then and still are as much as 2 percent below the rate we require.

In July of 1988, Larry Buegler, president of the Farm Credit Bank of St. Paul and I met with Eric Thor and Jack Cannady in Chicago. Mr. Thor's request was that the Grand Forks Association agree to become a part of the assistance package to the St. Paul Bank. His rationale was that as thinly staffed as the Assistance Board was, they would not be able to deal directly with each service center that required assistance. At that time we agreed.

He also informed us at that meeting that he had a legal opinion stating that assistance could be granted associations and district banks under three criteria: (1) to buy down high interest rate bonds, (2) to restore farmer's "B" stock to par value, and (3) to assure viability of an operation. The opinion I believe he had from the Legal Department of the Treasury indicated there were no funds available for direct interest subsidy to farmers.

By that time it appeared the drought, severe as it was, was not going to have the economic impact we had anticipated. We had recalculated our minimum assistance requirement, had determined that a bare minimum necessary to assure viability and return stock to par was $7.5 million without any assistance to farmer/members on interest rates. Jack Cannady and I had agreed that that was the minimum number. I agreed to work with the District Bank, recognizing that it meant assistance would be delayed several months as the Assistance Board was just beginning to take a thorough investigation they had completed in Grand Forks on the District Bank.

It was about that time that you and I had talked and you talked to Eric Thor, and subsequently told me what the problems were and that why assistance was being delayed. The Farm Credit Bank of St. Paul subsequently got assistance on November 23. We negotiated with the Farm Credit Bank of St. Paul on an assistance agreement, and we waited for more than 2 months for the Assistance Board to approve the agreement which was entirely their language, and copied from the Assistance Agreement between the Farm Credit Bank and the Assistance Board.

Finally on March 31, 1989, $7.5 million of assistance was credited to the loan account of the Production Credit Association with the Federal Intermediate Credit Bank of St. Paul.

The purpose of this letter is not to be critical of either the Bank or the Assistance Board, but to clarify in your mind the amount of time and effort that went into requesting assistance, and the determination by the Assistance Board early on that, in spite of the intent of Congress, there was going to be no money granted to reduce interest rates to borrowers.

Thanks again for your help. It was a key element in our being able to continue to work with the Assistance Board and to understand where they were coming from. We appreciate your continued interest and support of the System, and your willingness to step forward in our behalf when necessary.

Sincerely,

ROBERT C. PALMER,
President.

PREPARED STATEMENT OF RAY AND BONNIE BIEBER, FARMERS, MOTT, ND

Senator Conrad: Thank you for conducting the hearing in Bismarck, North Dakota. We appreciate your interest and concern to review the problems of borrowers concerning the Agricultural Credit Act of 1987.

As my testimony indicated after the settlement with FCS our tax consequences on the capital gains were high. You indicated that there is a bill being introduced to help others with this particular problem. Would it be possible to make any recommendations? I would like to have any benefits retroactive.

During the audience testimony we realized that the problems encountered with FCS were experienced by others.

1. Reason for denial—"The cost of restructuring your loans as per your proposal has been determined to be greater than the cost of foreclosure."
2. New buyers were given lower interest rates for longer terms.
3. Reluctance to disclose the worksheets and appraisals to individuals. (We were charged $1 for all appraisals we finally received.)
4. Loan officers did not have guidelines. There appeared to be confusion within FCS and borrowers were not given their rights and responsibilities.
5. Unwillingness to write-down loans even though there was a decline in collateral value and cash-flow was reduced by low prices.

Our personal experience included several additional problems. We were moved to three different loan officers with the last one being 40 miles away. Two loan officers advised us not to pay the FLB interest. Other requests made by FCS were to make major operational changes and reorganize, dissolve our farm partnership, drop the rented land to cut expenses, one son could no longer farm with us because of his debt and the other son was released to FmHA for financing. We complied with all the requests. In one session with a loan officer, we asked for partial forgiveness of the loan and lower interest rates. He replied, "You're not that bad yet." But in the next statement he indicated that we should get the sale bills ready.

We submitted the first proposal on February 18, 1987. During the meeting we were told that it wouldn't work, so we suggested an alternative. On March 19, 1987, we submitted a third proposal to deed-over land. We were anxious to settle at this time. On November 9, 1987, we met with the lawyers and were told that they will continue to negotiate. The next correspondence from their office was the foreclosure papers. In March 1988 we submitted a restructure packet complete with cash-flow and supporting material to repay the debt in 11 years with 9 percent interest. On April 27, 1988, our proposal was denied. Up to this time we had no evidence of their worksheets on any of our proposals. Another proposal was submitted in May of 1988. We eventually settled in late 1988. After October 6, 1988, every thing was rushed. The offer of March 1987 was very near the March 1988 proposal. We felt FCS deliberately stalled closing to allow the interest to pile up on our loans.

After our settlement with FCS our local banker suggested and assisted with the FmHA Interest Rate Buydown Program. On November 17, 1988, we received two letters from FmHA. One offered us information regarding the Interest Rate Buydown Program and the other refusing our proposal that had been submitted. The reasons were: "Based on your proposed plan between the land you own and the land you rent, the amount of tillable acres, the wheat base, and standard of living being projected the committee feels your proposed operation exceeds the family farm concept in this area."

We personally feel that congressional intentions are not being carried out with the Agricultural Credit Act of 1987. The distressed borrowers are not benefiting from the "bail out."

PREPARED STATEMENT OF SHAWN D. FREDERICKS, PRESIDENT, FORT BERTHOLD LAND AND LIVESTOCK ASSOCIATION, NEW TOWN, ND

Honored and distinguished members of the subcommittee, it is my pleasure and honor to address you today. My name is Shawn Fredericks, I am the chairman pro tempore of the Northern Plains Indian Land and Livestock Association, a newly formed organization consisting of Indian tribes and Indian landowners throughout the Northern Plains area, consisting of North and South Dakota, Nebraska, Wyoming, and Montana. The Northern Plains Indian Land and Livestock Association was created to provide an entity through which the various Indian landowners and Indian tribes can collectively address the problems currently facing Indian agriculture. My purpose in appearing before you today is to inform you of a serious problem currently existing in Indian agriculture. That problem has to do with the many thousands of acres of Indian trust land that are currently under mortgage in the Northern Plains area, many of which are facing the immediate threat of foreclosure.

As you probably know, in 1956 Congress enacted section 483A of title 25 of the United States Code, which allowed individual Indian owners of trust land to execute a mortgage or deed of trust to such land in order to obtain credit. These mortgages were subject to the approval of the Federal trustee, through the Bureau of Indian Affairs.

It is the position of the Northern Plains Indian Land and Livestock Association that Congress intended the mortgage approval process by the Bureau of Indian Affairs to ensure adequate protection of the trust land base. Congress was concerned with preventing the approval of improvident trust land mortgages in enacting section 483A. Unfortunately, it appears that the Bureau of Indian Affairs was sorely deficient in carrying out this responsibility. Our investigation indicates that, in the late 1970's and 1980's, thousands of acres of trust land were mortgaged to secure emergency disaster type loans from the Farmers Home Administration, with short amortization periods, and inadequate loan servicing conditions. To say the least, these mortgages contained a high degree of risk. Due to the farm crisis, and the riskiness of the emergency disaster type loans and other similar type loans secured by trust land mortgages, thousands of acres of Indian trust land in the Northern Plains area are currently facing foreclosure as a result, individual farmers and ranchers are facing the immediate loss of their trust land base.

To give you an idea of the magnitude of the problem, I would like to recite to you a few statistics. In Montana and the Dakotas alone, more than 850,000 acres of trust land had been mortgaged by 1986. Statistics prepared by the Aberdeen Area Credit Task Force indicate that as of August 1985 that in the Dakotas and Nebraska, the Farmers Home Administration was the lending agency in 70 percent of the cases involving trust land mortgages, involving approximately 248,390 acres of trust land. As of August 1985, the overall rate of loan delinquency stood at 80 percent according to the Aberdeen Area Credit Task Force. The situation is much the same in the Billings area, encompassing Montana and Wyoming. As of October 1986 there were 377,449 acres of individual trust land under mortgage with a debt burden of $52.1 million. Again, the FmHA was the largest lender holding 16.7 million in mortgages. Although as yet we do not have complete information, our preliminary investigation indicates that the majority of trust acres under mortgage in the Northern Plains are facing the immediate threat of foreclosure. To give you an idea, as of August 1985, the overall rate of loan delinquency in the Aberdeen area stood at approximately 80 percent.

It is the position of the Northern Plains Indian Land and Livestock Association that the circumstances under which many of these trust land mortgages were approved constitutes a serious breach of trust by the Department of the Interior, acting through the Bureau of Indian Affairs. In particular, with respect to the FmHA mortgages, it appears that the Bureau of Indian Affairs did not conduct review of the loans secured by trust land mortgages. In essence, the Bureau of Indian Affairs simply rubber stamped their approval. In addition, it is our belief that mortgages approved to secure emergency disaster type loans, with short amortization periods and with little or no loan servicing conditions designed to guard against delinquency, also constitutes a breach of the Federal Government's trust responsibility. The Northern Plains Indian Land and Livestock Association's legal position is more fully set out in a law review article written by John Fredericks III, entitled, "Financing Indian Agriculture: Mortgaged Indian Lands and the Federal Trust Responsibility." I have that article, along with a letter to Senator Conrad outlining the problem, with me, and would like to make them part of the record of these proceedings. I encourage all of the distinguished members of this committee to examine those documents, in order to become more familiar with the problem and the legal issues involved.

The Northern Plains Indian Land and Livestock Association is currently working toward providing an appropriate legal solution to the problem of the many trust land mortgages and the Federal Government's responsibility in approving those mortgages. We believe that a congressional solution to the problem may be more appropriate than long drawn out court proceedings. I would refer the committee to the letter addressed to Senator Conrad from John Fredericks III dated April 26, 1989, at page 2. I referred to that letter earlier in this statement. The proposal in that letter suggests remedial legislation requiring the transfer of debt in trust land mortgages from the FmHA into the Bureau of Indian Affairs Credit Program with a congressional directive to provide Indian farmers and ranchers the ability to reorganize and restructure their debt obligations to enable them to put themselves in a position to repay their trust land mortgages. This would be done essentially through decreasing the debt obligations to the fair market value of the trust land collateral, amortizing the debt obligations over a 4 year period in order to provide smaller and more manageable yearly payment obligations, as well as providing operating loans to enable the Indian farmers and ranchers to become productive again. I believe that the Bureau of Indian Affairs, not the FmHA is the more appropriate agency to handle this problem. Essentially, this is because the BIA is better equipped to enforce the Federal trust responsibility in this regard. In addition, although the Farm Credit Act amendments go a long way toward correcting the problem, they do not appropriately address the individual trust land mortgage problem. Nor do the amendments address the special trust relationship existing between the United States and Indian people. Indeed, in many instances the FmHA refuses to acknowledge any trust relationship with Indian operators in mortgaging trust land.

We believe that the legislation outline above can be accomplished through an amendment to the Indian Financing Act, which deals specifically with Indian agriculture. After all, agriculture is a predominate industry in Indian country, particularly in the Northern Plains area. A subchapter of the Indian Financing Act dealing with Indian agriculture, credit and finance, is therefore most appropriate. One of the problems in the past had to do with the Bureau of Indian Affairs' inability to serve as a trustee with regard to the special problems of Indian agricultural credit and finance. The FmHA, although knowledgeable in the area, has never acted as a Federal trustee toward Indian borrowers, but has always acted as a lender. As John Fredericks' law review article indicates, this has serious legal implications given the law of the Federal trust responsibility. At any rate, the point which I am trying to make is, in order for the Federal trustee to be adequately equipped to carry out its responsibilities to the Indian farmers and ranchers, a sound and working knowledge of Indian agricultural credit and finance is necessary. I would therefore strongly recommend that any congressional remedial legislation directed at remedying the delinquent trust land mortgages, and detrimental state of Indian agricultural in general, also require that the Bureau of Indian Affairs employ people knowledgeable in the field of agricultural credit, who can then adequately assist Indian farmers and ranchers in maintaining their operations through proper loan servicing, and needed management and technical assistance.

On behalf of the Northern Plains Indian Land and Livestock Association, I sincerely hope that this honorable committee will take this matter to heart, and in particular, with regard to the Farmers Home Administration, undertake to investigate the problem more fully, and come up with remedial legislation designed to cure what we consider a serious breach of trust by the involved agencies of the U.S. Government. Given the magnitude of the problem, I believe that well considered, well thought out legislation, is necessary. The problem should therefore be more fully investigated by Congress acting through the appropriate committees, with remedial legislation in mind.

However, the FmHA and other lending agencies are currently aggressively pursuing foreclosure proceedings against Indian trust land. If, as I proposed, Congress undertakes to investigate this matter with a view toward remedying the issue of the Federal Government's trust responsibility, I would strongly encourage Congress or perhaps even members of this subcommittee, to direct the Farmers Home Administration and other Federal lending agencies to defer any further foreclosure proceedings pending the outcome of a congressional investigation. The most appropriate means of doing this would be to put a congressional hold on further foreclosure action by the Farmers Home Administration, pending the outcome of a congressional investigation and, hopefully, remedial legislation. Alternatively, perhaps the Farmers Home Administration can be directed to put an administrative hold on their foreclosure proceedings pending investigation in remedial legislation. Either way, I do not believe that the FmHA should be allowed to continue aggressive foreclosure proceedings against trust land mortgages given the serious issues which have arisen with respect to the circumstances under which these mortgages were approved. I therefore respectfully request that the Farmers Home Administration and other Federal lending agencies be directed to defer any such foreclosure proceedings.

Once again, I would like to thank the members of the subcommittee for allowing me to appear before you to inform you of the problem which we face. I sincerely hope that Congress in the exercise of its unique relationship to Indian people, undertakes to remedy this serious problem.

[Letter to Senator Conrad and the American Indian Law Review article by John Fredericks III follow:]

FREDERICKS & PELCYGER,
Boulder, CO, April 26, 1989.

Senator KENT CONRAD,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR CONRAD: The purpose of this letter is to inform you of a serious problem currently existing in Indian Country. The problem has to do with the many thousands of acres of individual Indian trust land currently under mortgage in the Northern Plains area. My investigation and research of the matter indicates that most of these mortgages, at least those used to secure debt obligations to the Farmers Home Administration, were approved under circumstances which constitute a serious breach of trust by the United States. I enclose herewith an article which I have written and which was recently published in the *American Indian Law Review.* The article, "Financing Indian Agriculture: Mortgaged Indian Lands and the Federal Trust Responsibility," 14 Am. Ind. L. Rev. 105 (1989), discusses the Federal trust responsibility in approving trust land mortgages, and raises serious questions with respect to the fulfillment of that trust responsibility.

There are currently thousands of acres of trust land in the Northern Plains area alone, facing the immediate threat of foreclosure. Many Indian farmers and ranchers do not have the financial resources to defend against these foreclosure actions. Particularly, they lack the resources to hold the Federal trustee accountable in those cases where he has breached fiduciary duties. This letter is a plea for your help in their behalf.

I am a member of the Three-Affiliated Tribes of the Fort Berthold Indian Reservation in North Dakota. I am an attorney practicing in Boulder, Colorado, emphasizing Federal Indian law. I have long been concerned with the current condition of Indian agriculture, and the state of individual-owned trust land mortgages. Hopefully by reading the enclosed article, and investigating the problem raised therein, you and Members of Congress will undertake to provide a congressional solution. After looking at the problem and researching the legal issues involved, it is my personal belief that the most equitable and economical way to remedy the problem and address the questionable fulfillment of the Bureau of Indian Affairs trust responsibility is direct congressional intervention.

As I see it, there are two possible solutions which Congress could propose to remedy this problem:

First, Congress could direct the appropriation of funds to provide Indian farmers and ranchers facing foreclosure the financial resources to defend themselves in challenging the fulfillment of the Federal trust responsibility. 25 U.S.C. § 175 requires that the United States represent allotted Indians in all suits at law and in equity. Obviously, the United States Department of Justice cannot adequately represent the Indian allottees in a case against the United States, because of the patent conflict of interest. See, *Salt River Pima-Maricopa Indian Community* v. *Arizona Sand and Rock Co.*, 353 F. Supp. 1098 (D. Ariz. 1972). In cases involving trust resources, wherein a conflict of interests arises, it is within the discretion of the United States to provide outside legal counsel. *See* 25 CFR § 89.40 *et seq.* However, without support from Congress, I am not sure that the Department of the Interior would allow Indian farmers and ranchers to proceed under this provision. I would therefore respectfully request your support in their efforts at seeking funding from the United

States pursuant to the above provisions to institute any necessary legal action to protect their trust land.

Second, there is an appropriate remedial measure to take in addressing the failure of the FmHA and Bureau of Indian Affairs to adequately protect the individual Indian's trust land. That is, to provide remedial legislation which would require the transfer of debt and trust land mortgages from the FmHA over into the BIA, with a directive to provide Indian farmers and ranchers the opportunity to reorganize and restructure their debt obligations in a manner which would provide for repayability of the trust land mortgages. This would be done essentially through writing down many of the trust land mortgages to fair market value of the trust land collateral, by providing for a 40 year reamortization of the farmer's loans, as well as operating money to allow the Indian farmer to get back into production. I believe that this can be accomplished through an amendment to the Indian Financing Act, perhaps a subchapter known as the Indian Agricultural Credit and Finance Act.

In addition, any such legislation should also require that the Bureau of Indian Affairs, as the Federal trustee charged with fiduciary duties, employ personnel knowledgeable in the field of Indian agricultural credit, in order to appropriately comply with its trust responsibility. Knowledge of agricultural credit and finance, in particular Indian agricultural credit and finance, is a necessary element in fulfilling the trust responsibility to Indian ranchers. It is this lack of knowledge and expertise on the part of the BIA which led to the approval of many improvident trust land mortgages in the first instance. I believe that remedial legislation as outlined above would go far in undoing the serious degradations in the past.

I would certainly be willing to discuss the possibility of such legislation further with you, and do anything I can do to assist. I truly hope that you can appreciate the seriousness of this problem, and will undertake to address it in the very near future. As an American Indian who grew-up on a ranch, I am particularly close to the lifestyle and the values instilled in me as a result of that experience. To my dismay, due to the great number of individual Indian trust lands currently facing foreclosure, I see the lifestyle of the Indian farmers and ranchers threatened with extinction. I believe it would be a great loss for America to lose this aspect of our society. The American Indian agribusinessmen brings a unique perspective to American society, with his traditional cultural values interrelated with an agrarian lifestyle.

As a legislator who understands the unique relationship that the United States has with the various Indian tribes, and the unique social and cultural circumstances of the American Indian, I am confident that you will take this matter to heart.

Sincerely,

JOHN FREDERICKS III.

INDIAN LANDS: FINANCING INDIAN AGRICULTURE: MORTGAGED INDIAN LANDS AND THE FEDERAL TRUST RESPONSIBILITY

*John Fredericks III**

Congress' enactment of the General Allotment Act in 1887 marked the beginning of a new era in federal Indian policy and a dramatic change in the communal property concepts of Indian tribes.[1] Under the Act individual tribal members became owners of parcels of agricultural and grazing lands on their respective Indian reservations. Each reservation was divided into allotments with specified acreage going to each Indian resident. The federal policy expressed in the General Allotment Act was to end the system of tribal land ownership by Indians and to substitute private ownership in order to advance the assimilation of American Indians into white society.[2] In other words, the Indians were to become farmers.

For the most part, the assimilative goals of the General Allotment Act failed, and Indian tribes were able to remain outside the great American melting pot. Nevertheless, the agricultural goals behind allotment of tribal lands had its effect on Indian culture. An agrarian lifestyle was fairly compatible with the culture of the nomadic hunting and gathering tribes of the West, most of whom were on reservations by 1887. Moreover, many Indian tribes had a rich tradition of agriculture long before the first white men came to the New World. As a result, many Indian people easily embraced the agrarian lifestyle after the General Allotment Act. Today, farming and ranching is a major enterprise in Indian country, as fragile as the industry may be.

Section 5 of the General Allotment Act expressly provided that the allotted lands would be held in trust for the sole use and benefit of the allottees and their heirs.[3] The United States Supreme Court has held that this language creates a limited trust relationship that does not of itself impose fiduciary management duties on the United States. Instead, the trust status was intended only to prevent improvident alienation of the allotted lands and assure their immunity from state taxation.[4] Many of the allotments retain this trust status today.[5]

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[1] 25 U.S.C. §§ 331 *et seq.* (1982).

[2] Northern Cheyenne Tribe v. Hollowbreast, 425 U.S. 649 (1976).

[3] 25 U.S.C. § 348 (1982).

It was against the background of the General Allotment Act that Congress in 1956 enacted section 483a of title 25 of the United States Code, which allowed individual Indian owners of trust land to execute a mortgage or deed of trust to such land. All mortgages were made subject to the approval of the Secretary of the Interior.[6] The idea was to encourage individual Indian landholders to utilize commercial credit to the maximum extent possible, under the proper supervision of the federal government.[7]

The Bureau of Indian Affairs (BIA), as the federal agency charged with approving trust mortgages under section 483a, has regularly exercised this authority. In Montana and the Dakotas alone, more than 850 thousand acres of trust land had been mortgaged by 1986.[8] Most of the approved mortgages were taken for agricultural loans. Today, many of these section 483a-approved mortgages are in default. As a result, affected Indian farmers are in danger of losing their land to creditors through foreclosure, and Indian tribes are facing yet another erosion of their land base.

This paper examines the nature and extent of the federal trust responsibility in approving mortgages of trust and restricted allotments. Part I explores the trust responsibilities of the United States in general in the management and protection of Indian property. Part II looks at how these duties apply in the process of approving mortgages under section 483a. Finally, part III examines some possible remedial measures, both judicial and nonjudicial, available to the Indian farmer facing potential foreclosure of trust land.

I. *The Federal Trust Responsibility in General*

Establishing the Fiduciary Relationship

It has long been established that the United States owes general trust responsibilities in its dealings with Indian people,[9] but the extent of these responsibilities is unclear. The existence of the general trust responsibility does not necessarily imply full-fledged fiduciary duties.[10] For purposes of establishing this complete trust, something more than the existence of the common law general trust relationship is required. The United States Court of Claims has gone so far as to say that in order for there to be a complete trust relationship, there must be a clear or strong showing that Congress intended to create such fiduciary duties.[11]

The notion of the Indian trust doctrine evolved judicially, having its origin in two United States Supreme Court cases written by Chief Justice Marshall, *Cherokee Nation v. Georgia*[12] and

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[4] United States v. Mitchell, 445 U.S. 535 (1980) (Mitchell I). *See* United States v. Mitchell, 463 U.S. 206 (1983) (Mitchell II).

[5] The original plan under the General Allotment Act was that the allotments be held in trust for twenty-five years, after which time the Indian owner would receive a fee patent. However, under section 2 of the Indian Reorganization Act of 1934 (25 U.S.C. § 462 (1982)), the trust period was extended indefinitely.

[6] The text of 25 U.S.C. § 483a (Supp. 1986) states in relevant part:

> Mortgages and deeds of trust by individual Indian owners
>
> (a) Foreclosure or sale of land
>
> The individual Indian owners of any land which either is held by the United States in trust for them or is subject to a restriction against alienation imposed by the United States are authorized, subject to approval by the Secretary of the Interior, to execute a mortgage or deed of trust to such land. Such land shall be subject to foreclosure or sale pursuant to the terms of such mortgage or deed of trust in accordance with the laws of the State or Territory in which the land is located. For the purpose of any foreclosure or sale proceeding the Indian owners shall be regarded as vested with an unrestricted fee-simple title to the land, the United States shall not be a necessary party to the proceeding, and any conveyance of the land pursuant to the proceeding shall divest the United States of title to the land. All mortgages and deeds of trust to such land heretofore approved by the Secretary of the Interior are ratified and confirmed.

[7] 1956 U.S. Code Cong. & Admin. News 2304.

[8] K. Fredericks, "Report to American Indian Agricultural Credit Consortium on Financing Indian Agriculture" (1988) (unpublished). Much of the factual and statistical information in this note is based upon three unpublished reports: "The National Indian Agricultural Working Group, Final Findings and Recommendations" (December 1987) [hereinafter NIAWG Final Report]; the Aberdeen Area Credit Task Force, "Recommendations To Aberdeen Area Director" (Aug. 1, 1985) [hereinafter Task Force Report]; and the Fredericks, AIACC Report, *supra*, authored by Kenneth Fredericks, Sr.

[9] *See, e.g.*, Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831); Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832); United States v. Kagama, 118 U.S. 375 (1886); Choctaw Nation v. United States, 119 U.S. 1 (1886); Lone Wolf v. Hitchcock, 187 U.S. 553 (1903); United States v. Sandoval, 231 U.S. 28 (1913); United States v. Candelaria, 271 U.S. 432 (1926); United States v. Creek Nation, 295 U.S. 103 (1935); Shoshone Tribe v. United States, 299 U.S. 476 (1937); Seminole Nation v. United States, 316 U.S. 286 (1942); United States v. Mason, 412 U.S. 391 (1973); Morton v. Ruiz, 415 U.S. 199 (1974); Mitchell v. United States, 363 U.S. 206 (1983).

[10] *See, e.g.*, Mitchell v. United States 463 U.S. 206, 225 (1983); Montana Bank of Circle v. United States, 7 Ct. Cl. 601, 613 (1985); Fort Belknap Indian Community v. United States, 231 Ct. Cl. 871, 873-74 (1982).

[11] Montana Bank of Circle v. United States, 7 Ct. Cl. 601, 613 (1985).

[12] 30 U.S. (5 Pet.) 1 (1831).

Worcester v. Georgia,[13] in 1831 and 1832, respectively. Since that time, the law of the Indian trust doctrine has had an inconsistent and somewhat unstable development. The exact history of this development is beyond the scope of this paper since the real purpose is to examine the trust doctrine as it exists today in connection with the federal government's duties in approving the trust land mortgages.[14]

The discussion will assume the existence of the so-called general trust relationship at the outset. The general trust responsibility essentially encompasses a general duty of fairness and protection. It arises out of the special relationship between the United States and the various Indian tribes, a relationship similar to that of a guardian to his ward.[15] The general trust responsibility has long dominated the United States' dealings with Indian people, and its existence is undisputed.[16] Of more importance is an examination of those duties as they are established in a complete trust with fully accountable fiduciary obligations. Thus, an inquiry into the requirements of establishing this stricter trust relationship is in order.

The United States Supreme Court recently addressed the trust doctrine in *United States v. Mitchell* (*Mitchell II*).[17] *Mitchell II* involved alleged breaches of trust in connection with the BIA's management of forest resources on allotted lands of the Quinault Indian Reservation in Washington state. The plaintiffs were various individuals who owned interests in the allotments on the reservation and who were suing for monetary damages under the Tucker Act.[18] The case was before the Court for the second time. In *Mitchell I*,[19] the plaintiff allottees had asserted that the United States had a fiduciary obligation under the General Allotment Act to manage the timber resources on the allotments and was subject to monetary damages under the Tucker Act for failure to do so. As previously stated, the Court rejected the plaintiff's argu-

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[13] 31 U.S. (6 Pet.) 515 (1832).

[14] An examination of the history and development of the trust doctrine may be found in Chambers, *Judicial Enforcement of the Federal Trust Responsibility*, 27 Stan. L. Rev. 1213 (1975).

[15] Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 17 (1831).

[16] Northern Arapahoe Tribe v. Hodel, 808 F.2d 741, 750 (10th Cir. 1987); Gila River Pima-Maricopa Indian Community v. United States, 9 Cl. Ct. 660, 677 (1986).

[17] 463 U.S. 206 (1983).

[18] 28 U.S.C. § 1491 (1948).

[19] 445 U.S. 535 (1980).

ment and held the General Allotment Act created only a limited trust relationship between the United States and the allottees, which did not of itself impose a fiduciary duty on the United States to manage timber resources on allotted lands. Rather, this limited trust was only for the purpose of preventing improvident alienation and assuring immunity from state taxation.[20] However, *Mitchell I* left open the question whether the plaintiff allottees could recover under some source other than the General Allotment Act.[21]

On remand, the United States Court of Claims took the Supreme Court's lead and held that the plaintiffs could assert a cause of action under the Tucker Act based on various federal statutes involving timber management, road building and rights-of-way, Indian funds management and government fees, and the regulations promulgated thereunder.[22] The court further held that these statutes and regulations gave the federal government full authority to manage the Indian property and land, and thereby created a fiduciary duty on the part of the United States in carrying out such management functions.[23]

The Supreme Court affirmed in *Mitchell II*, noting that the timber management statutes relied on by the lower court established comprehensive responsibilities on the part of the federal government in managing the harvesting of Indian timber, with the BIA exercising literally daily supervision over the harvesting and management process.[24] The Court held that where such a relationship exists, a fiduciary obligation necessarily arises since "[a]ll of the necessary elements of a common law trust are present: a trustee (the United States), a beneficiary (the Indian allottees) and a trust corpus (Indian timber lands and funds)."[25] The Court went on to state that

> Where the Federal Government takes on or has control or supervision over tribal monies or properties, the fiduciary relationship normally exists with respect to such monies or properties . . . even though nothing is said expressly in the authorizing

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[20] *Id.* at 542-45. See *supra* text accompanying note 4.

[21] 445 U.S. at 546.

[22] 25 U.S.C. §§ 406, 407, 466 (1982).

[23] Mitchell v. United States, 664 F.2d 265, 267-68 (Ct. Cl. 1981).

[24] 463 U.S. 206, 222-25 (1983).

[25] *Id.* at 225. *See* Restatement (Second) of Trusts § 2, comment h. (1959).

or underlying statute (or other fundamental document) about a . . . trust or fiduciary connection.[26]

Mitchell I and *Mitchell II* can be read as establishing two separate principles under which a full fiduciary relationship may be established between the United States and individual Indian owners of trust allotments. First, an express trust may be created by the terms of a treaty, statute, executive order, or other operative document.[27] Second, the existence of the fiduciary relationship may be implied from the federal government's supervision or control over Indian property.[28] One court has indicated that the establishment of a full trust by implication, from control over Indian property, is a principle peculiar to Indian tribes, and is "a narrow exception . . . to the requirement that the government must expressly state its intent to manage the would-be beneficiaries' property as a trustee."[29] The notion that a fiduciary relationship between the United States and Indian tribes can arise by implication is an outgrowth of the general trust responsibility that the United States owes to Indian tribes, which properly recognizes the long history of federal control over Indian property. At a minimum, the fiduciary duty that arises from control over Indian property encompasses the solemn duty to protect the property from improvident alienation.

Where such congressionally authorized control over Indian property is established, a fiduciary relationship exists with respect to that property, even though nothing is said expressly in the underlying or authorizing statute about a trust or fiduciary connection.[30]

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[26] 463 U.S. at 225 (approving Navajo Tribe of Indians v. United States, 224 Ct. Cl. 171, 183 (1980)).

[27] *Mitchell II*, 463 U.S. at 222-25. *See also* Pawnee v. United States, 830 F.2d 187 (Fed. Cir. 1987) (Indian mineral-leasing statutes and regulations established fiduciary relationship); Red Lake Band of Chippewa Indians v. Barlow, 834 F.2d 1393 (8th Cir. 1987) (1916 Act giving Secretary authority to manage Indian forest in a way beneficial to Red Lake Band established fiduciary relationship); Assiniboine & Sioux Tribes v. Board of Oil & Gas Conserv., 792 F.2d 782 (9th Cir. 1986) (Indian Mineral Leasing Act of 1838 establishes fiduciary relationship); Navajo Nation v. Hodel, 645 F. Supp. 825 (D. Ariz. 1986) (Indian Child Welfare Act and Snyder Act creates fiduciary relationship); Ute Indian Tribe v. Hodel, 673 F. Supp. 619 (D.D.C. 1987) (congressionally established judgment fund established fiduciary relationship).

[28] *Mitchell II*, 463 U.S. at 225. *See also* Gila River Pima-Maricopa Indian Community v. United States, 9 Ct. Cl. 660, 676-77 (1986); Navajo Tribe v. United States, 9 Ct. Cl. 336, 344 (1986).

[29] Hohri v. United States, 782 F.2d 227, 244 n.39 (D.C. Cir. 1986).

[30] Cape Fox Corp. v. United States, 4 Ct. Cl. 223 (1983); American Indians Residing

This proposition is consistent with the notion that no particular words or phrases are critical to the finding of a trust relationship when it is otherwise clear that Congress intended a trust relationship to exist.[31] In other words, that Congress chooses to retain control and supervision over tribal property is an indication of its intention to maintain a trust relationship with respect to such property. This is particularly true where the property is the land base itself, as opposed to, for example, the timber resources appurtenant to the land, as was the case in *Mitchell*. Protection of the Indian land base is an area where the trust responsibility has its greatest force.[32] Any abdication of that responsibility should not be lightly inferred.

The two principles introduced above will be elaborated on and applied more fully in connection with the discussion in part II, concerning the establishment of fiduciary duties in approving mortgages of trust land. Before turning to that issue, however, it is necessary to examine the standards under which the federal trustees' actions are measured.

The Standard of Conduct

Once the complete trust relationship is established, a further inquiry must be made into the standard of conduct to which the United States trustee will be held in its dealings with the Indian people. In general, where the United States has charged itself with trust responsibilities, its conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should be judged by the most exacting fiduciary standards.[33] This strict standard is applicable in judging the conduct of the federal government in transactions concerning Indian land.[34] In such cases, the United

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on Maricopa-Ak Chin Res. v. United States, 667 F.2d 980 (Ct. Cl. 1981); Navajo Tribe v. United States, 624 F.2d 981 (Ct. Cl. 1980).

[31] Whiskers v. United States, 600 F.2d 1332, (10th Cir. 1979), *cert. denied*, 444 U.S. 1078 (1980).

[32] Seminole Nation v. United States, 316 U.S. 286 (1942); Pyramid Lake Paiute Tribe v. Morton, 354 F. Supp. 252 (D.D.C. 1953); Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979).

[33] Seminole Nation v. United States, 316 U.S. 286 (1942); Nance v. Environmental Protection Agency, 645 F.2d 701 (9th Cir. 1981); Coast Indian Community v. United States, 550 F.2d 639 (Ct. Cl. 1977); Smith v. United States, 515 F. Supp. 56 (N.D. Cal. 1978); Manchester Band of Pomo Indians, Inc. v. United States, 363 F. Supp. 1238 (N.D. Cal. 1973); Pyramid Lake Paiute Tribe v. Morton, 354 F. Supp. 252 (D.D.C. 1972).

[34] Coast Indian Community v. United States, 550 F.2d 639, 652 (Ct. Cl. 1977); Navajo Tribe v. United States, 364 F.2d 320 (Ct. Cl. 1966); Aguilar v. United States, 474 F. Supp. 840 (D.C. Alaska 1979).

States has an obligation to safeguard the property of the Indians in dealings with third parties, and an even greater duty exists where the United States itself has an independent interest in the transactions.[35]

Thus, where the trust relationship is established, the standard of conduct by which actions of the United States on behalf of Indian people will be judged is not mere reasonableness but is of the highest fiduciary standard.[36] Consequently, in judging the conduct of federal officials taken pursuant to their trust responsibility, courts should apply the same trust principles that govern the conduct of private fiduciaries.[37] In reviewing the actions of the federal trustee, one can look to the general law of trusts in determining whether the federal trustee has complied with its obligations.[38]

On the other hand, the Court of Claims seems to take a more restricted position. In *Navajo Tribe v. United States*,[39] the Court of Claims stated that the federal trust obligations are not necessarily coterminous with those of a private fiduciary.[40] This position clearly seems wrong. The only instance where private fiduciary rules should not apply are those in which the full trust has not been established, as was the case in *Mitchell I*. But where the full fiduciary relationship is established, either implicitly, through control or supervision over Indian property, or expressly, by treaty, statute, or otherwise, there is no reason not to look to the law of private fiduciaries to judge the conduct of the federal trustee. To the contrary, where the full fiduciary relationship is established, the federal trustee is always governed by the "most exacting fiduciary standards."[41]

Although *Navajo Tribe* appeared to reject the law of private fiduciaries in all contexts to judge the conduct of the federal trustee, the court in reality seemed not so much concerned with the applicable standard of conduct as with the scope of the federal trustee's duties. That is, the court's opinion is more consistent if one were to look at it in the context of analyzing the scope

of the federal trustee's duties. In stating that private fiduciary law is not always applicable in Indian trust cases, the court gave as an example the rule that the federal trustee does not have a general duty to maximize income from tribal resources.[42] In this context, the court was, in reality, concerned with the scope of the trustee's obligations, rather than the proper standard of conduct. There can certainly be a problem in establishing the proper parameters of a trust created by implication. Where the fiduciary relationship is inferred from control over Indian property alone, this does not, as the court in *Navajo Tribe* stated, confer the affirmative duty on the federal trustee to maximize income from tribal land. To find such a duty, one must necessarily look to applicable statutes, treaties, and other relevant sources.[43]

Thus, the duty to make trust property productive, that is, affirmative management duties, may not be inferred from control alone. This is not to say, however, that the duty to manage may never be inferred from supervision or control over Indian property. In essence, the extent of the federal trustee's duties depend upon the extent of control and supervision it exercises. The more comprehensive the control, the more comprehensive the duties to affirmatively manage the property.

Regardless of the affirmative duty to make trust property productive, the federal trustee always owes a fiduciary duty, whether it be express or implied from control over Indian property, to protect and preserve the trust corpus. The duty to protect trust property, especially the Indian land base, lies at the very heart of the Indian trust doctrine.[44]

In addition, the tendency to look beyond mere control over property to establish affirmative management duties does not apply where trust monies are concerned. With respect to trust funds, the rule appears clear that the United States must undertake affirmatively to maximize the trust income.[45]

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[35] Navajo Tribe v. United States, 364 F.2d 320, 322-23 (Ct. Cl. 1966).

[36] American Indians Residing on Maricopa-Ak Chin Res. v. United States, 667 F.2d 980 (Ct. Cl. 1981), *cert. denied*, 456 U.S. 989 (1982).

[37] Assiniboine & Sioux Tribes v. Board of Oil & Gas Conserv., 792 F.2d 782, 794 (9th Cir. 1986).

[38] Navajo Tribe v. United States, 9 Ct. Cl. 336, 412 (1986) (citations omitted).

[39] *Id.*

[40] *Id.*

[41] Seminole Nation v. United States, 316 U.S. 286, 297 (1942).

[42] 9 Ct. Cl. at 412 (citing Navajo Tribe v. United States, 222 Ct. Cl. 158 (1979)).

[43] *See* Navajo Tribe of Indians v. United States, 9 Ct. Cl. 336, 412 (1986). *See also* White Mountain Apache Tribe v. United States, 11 Ct. Cl. 614, 619 (1987) (fiduciary duty to act affirmatively does not arise independent of linchpin treaty, statute, executive order, or regulation that charges government with specific duties to act).

[44] See *supra* text accompanying note 32.

[45] Ute Indian Tribe v. Hodel, 673 F. Supp. 619, 621 (D.D.C. 1987); Cheyenne Arapaho Tribe v. United States, 512 F.2d 1390, 1394 (Ct. Cl. 1975). *See* Red Lake Band of Chippewa Indians v. Barlow, 834 F.2d 1393, 1399 (8th Cir. 1987) (Secretary's duty to manage funds generated from forest reserve included the duty to actively seek the best use of the funds).

The Standard of Care

Having analyzed the standard of conduct and the scope of the federal trustee's fiduciary duties, it is appropriate also to discuss the proper standard of care and its various implications. The Supreme Court discussed the proper standard of care in *United States v. Mason*.[46] The Court properly made reference to general principles of the law of private trusts, holding that as a trustee serving in a fiduciary capacity, the United States is duty bound to exercise "great care" in administering its trust.[47] The Court then noted that the trustee is not an insurer of trust property. Rather, it is under a duty in administering the trust to exercise "such care and skill as a man of ordinary prudence would exercise in dealing with his own property."[48] The prudent person standard is the generally accepted standard of care in the law of private fiduciaries.

The degree of care the federal trustee must exercise depends in part upon the situation of the trust property. Where the actions of the federal trustee involve potential alienation of the trust corpus, the degree of care exercised by the federal trustee will be given stricter scrutiny.[49] On the other hand, the federal trustee will be given more leniency when it comes to his duties to make trust property productive. In such cases, the trustee must use "reasonable care and skill to make the trust property productive."[50]

Holding the federal trustee to a stricter standard in cases involving possible alienation of trust property comports with the prudent person standard articulated in *Mason, supra*. It seems obvious that the man of ordinary prudence, when faced with the possible destruction or alienation of his property, would exercise a greater degree of care in making decisions than he would when faced with ordinary investment alternatives, as, for example, which alternative yields a higher rate of return. Thus, where the trust property itself is not in danger of destruction but the only question is how to manage it so that it will produce income (assuming the duty to manage exists), the prudent person may not use as great a degree of caution in making his decision. In fact, the prudent person may choose riskier alternatives that may turn out to be more profitable than a safer alternative in the long run.

The point is, the care that a man of ordinary prudence would exercise in dealing with his own property denotes a certain degree of caution, skill, and good judgment.[51] Prudence is equated with caution as to danger of risk, as skill and good judgment in the use of resources. Thus, a prudent person exercising reasonable care by definition will use that degree of caution, skill, and good judgment in the use of resources that is equated with the common definition of prudence.

In addition, while the normal standard of care and skill required of a trustee is that of a man of ordinary prudence in dealing with his own property, if the particular trustee has a greater degree of skill than that of a man of ordinary prudence, he will be held liable for any loss resulting from the failure to use such skill as he has.[52]

II. *The Federal Trust Responsibility in Approving Mortgages Under Section 483a*

Trust Responsibility of the Secretary of the Interior

Based on the above discussion concerning the establishment of a fiduciary duty on the part of the federal government in the management of trust allotments, the question arises as to whether the federal government, acting through the Bureau of Indian Affairs owes strict fiduciary duties in approving mortgages of trust allotments under section 483a. The answer appears clearly to be in the affirmative.

First, full fiduciary duties may be established expressly from the General Allotment Act and section 483a themselves. That is, under the General Allotment Act, the United States has an express trust obligation to prevent improvident alienation of the trust allotments. To the extent one comes within the parameters of this so-called limited trust, full fiduciary responsibilities should be established. Moreover, the trust duty to prevent improvident alienation mandated in the General Allotment Act was carried over by Congress into section 483a. Given the wording in the text of section 483a, as well as its legislative history,[53] it is fairly clear that Congress did not intend that the mortgage approval process be taken lightly.

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[46] 412 U.S. 391 (1973).

[47] *Id.* at 398 (citing Seminole Nation v. United States, 316 U.S. 286, 296-97 (1942)).

[48] *Id.* (citing 2 A. SCOTT, TRUSTS 1408 (3d ed. 1967)).

[49] *See, e.g.*, Smith v. United States, 515 F. Supp. 56 (N.D. Cal. 1978) (holding that United States breached its fiduciary duties in allowing termination of Indian rancheria held in trust).

[50] Manchester Band of Pomo Indians, Inc. v. United States, 363 F. Supp. 1238, 1245 (N.D. Cal. 1973).

[51] It is generally recognized that caution is implicit in the element of prudence. The more modern tendency is to emphasize this by stating that the test is not how one would act with regard to one's own property, but how a prudent trustee would act in administering the property of *others* or how a trustee would act in *conserving* the property. *See* UNIFORM PROBATE CODE § 7-302 (1969). *See also* E. SCOLES & E. HALBACH, JR., PROBLEMS AND MATERIALS ON DECEDENT'S ESTATES AND TRUSTS 592 (3d ed. 1981).

[52] Manchester Band of Pomo Indians, Inc. v. United States, 363 F. Supp. 1238, 1245 (N.D. Cal. 1973); RESTATEMENT (SECOND) OF TRUSTS § 174, comment at 379 (1959).

Section 483a makes the executed mortgage "subject to approval by the Secretary of the Interior."[54] It is noteworthy that Congress did not confer absolute discretion on the Secretary in making his decisions to approve or disapprove the mortgages. This suggests the seriousness with which Congress viewed the approval process. In those instances where Congress gives the Secretary discretion in the decision-making process, usually with respect to management functions, the Secretary's conduct will be judged by less stringent standards and will generally be upheld unless found to be arbitrary, capricious, or unreasonable.[55] When Congress wishes to confer discretion on the Secretary, it will generally do so expressly on the face of the statute.[56] It follows then, that Congress knows how to clothe the Secretary with discretion in discharging his duties to administer Indian affairs, and where it wishes to do so, will do so expressly. The fact that Congress did not commit the approval of trust mortgages to the discretion of the Secretary indicates that Congress recognized the possibility of improvident alienation of the allotments through subsequent default and foreclosure. Congress was therefore concerned with taking appropriate precautions against such alienation by requiring the Secretary or his delegates to use proper care in making his decisions in order to ensure the protection of the trust property.

The legislative history of section 483a supports this conclusion. Senate Report No. 1647 emphasizes that the approval of mortgages be "under proper supervision."[57] Moreover, the Committee on Interior and Insular Affairs, to which the bill was referred,

was assured by representatives of the Bureau of Indian Affairs that "proper care" would be exercised in approving mortgages in order "to prevent improvident loans which would result in the alienation of Indian lands."[58]

It should therefore be apparent from the text and legislative history of section 483a that Congress fully intended that the trust responsibility recognized in the General Allotment Act be maintained and continued in full force under section 483a. That the mortgages are subject to the approval of the Secretary, under proper supervision and care as evidenced in the legislative history, makes this conclusion seem inescapable.

Moreover, while section 483a provides that for purposes of foreclosure the land shall be considered held in fee, there is no evidence that Congress intended to abrogate these trust responsibilities prior to the approval of the mortgages. Any withdrawal of trust obligations by Congress must be plain and unambiguous to be effective,[59] and no such intent exists in section 483a.

A federal district court has imposed strict fiduciary duties in a similar situation where transactions involving Indian land required the approval of the Secretary of the Interior or his delegated agent. *Coomes v. Adkinson*[60] was a case concerned with the duties of the federal government in approving leases of restricted Indian allotments under section 393 of title 25. Under section 393 the leases were subject to the approval of the Superintendent of the Bureau of Indian Affairs or other officers in charge of the reservation, under rules and regulations prescribed by the Secretary of the Interior. The plaintiffs in *Coomes* were challenging a decision by the BIA to reject the lease bids on six grazing units. The *Coomes* court correctly noted that section 393 was concerned with Indian lands, and that in dealing with such the federal government is in a position of trustee and must "maintain sharp focus on and strict adherence to concomitant fiduciary responsibilities."[61] The court then noted that the purpose of section 393 was the protection of Indian lands and the prevention of fraud and unfairness in leasing those lands.[62] Since the Secretary was granted supervisory power to see that this purpose was effectuated, the court held that section 393 created a fiduciary relationship that imposed strict and distinctive obligations of guardianship trust which would be judged by the most exacting fiduciary standards.[63]

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[53] In determining whether legislation preserved a beneficial interest in the Indian people, courts will examine the face of the act itself, its legislative history, and surrounding circumstances. Idaho v. Andrus, 720 F.2d 1461 (9th Cir. 1983), *cert. denied*, 469 U.S. 824 (1984).

[54] See *supra* note 6.

[55] *See, e.g.*, Kenai Oil & Gas, Inc. v. Department of the Interior, 671 F.2d 383 (10th Cir. 1982).

[56] *See, e.g.*, 25 U.S.C. §§ 337, 349, 350, 352a, 392, 396d, 396e, 403, 409a, 483 (1982).

[57] 1956 U.S. CODE CONG. & ADMIN. NEWS 2304, 2305.

[58] *Id.*

[59] Joint Tribal Council of Passamaquoddy Tribe v. Morton, 528 F.2d 370 (1st Cir. 1975).

[60] 414 F. Supp. 975 (D.S.D. 1976).

[61] *Id.* at 986.

[62] *Id.* at 991.

The underlying rationale for imposing full trust responsibilities in *Coomes* was the fact that the lease transactions required to be approved by the Secretary involved Indian land. That the Secretary is required to approve transactions involving the Indian trust land is entirely consistent with the high fiduciary responsibilities it owes in managing trust land.[64] It is in this situation that there exists all the elements of a common law trust. The federal government (trustee) is making decisions pursuant to a legal obligation imposed by Congress, with respect to the Indian land (the trust corpus), in the best interests of the Indian people (the beneficiaries).[65] Consequently, in this situation the conduct of the federal trustee should be judged by those fiduciary standards applicable to common law trustees.

The *Coomes* case raises a second argument for imposing full trust responsibilities on the federal government in approving mortgages under section 483a. The very fact that the Secretary's decisions under section 483a reflect a certain degree of control and involve a danger of alienation of the trust land should itself be sufficient to establish fiduciary responsibilities. By requiring secretarial approval of the mortgages under section 483a, Congress has granted a certain degree of supervision and control to the federal government over the affected allotments.[66] The approval clause in section 483a reflects the tradition of federal control over Indian lands, at least up to the point where the mortgage is duly approved.[67] As such, the federal trustee has a strict fiduciary duty to ensure the protection of the land.

Mitchell II recognized that where the federal government assumes or has control or supervision over tribal property the fiduciary relationship normally exists with respect to such property (unless Congress had directed otherwise).[68] In those situations where the government is dealing with Indian property, the existence of a fiduciary relationship can be inferred even though nothing is said expressly in the underlying statute about a fiduciary relationship.[69] This proposition is attributable to settled doctrine that the United States, as regards its dealings with the property of the Indians, acts as a trustee.[70]

The rule that federal supervision and control over trust property is of itself sufficient to establish a fiduciary relationship has even more force where the decisions affecting the trust property involve a risk of alienation.[71] Approval of mortgages of trust allotments under section 483a clearly involves a real risk of alienation, one that Congress recognized in considering passage of section 483a.[72] Under these circumstances the decisions of the Bureau of Indian Affairs should be subject to the fiduciary standards of a private trustee, and in making the decision whether to approve the mortgage the federal trustee should use great care to ensure the protection of the trust land.

In sum, there are basically two arguments, either of which establishes a fiduciary duty upon the Secretary of the Interior in approving mortgages under section 483a. First, there is an express trust responsibility under the General Allotment Act and section 483a to prevent improvident alienation of the trust allotments.

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[63] *Id.*

[64] Navajo Tribe v. United States, 365 F.2d 320 (Ct. Cl. 1966); Kenai Oil & Gas, Inc. v. Department of Interior, 522 F. Supp. 521, 534-35 (D. Utah 1981), *aff'd*, 671 F.2d 383 (10th Cir. 1982). *Cf.* Montana Bank of Circle v. United States, 7 Ct. Cl. 601 (1985) (federal statute requiring Secretary's approval of any contracts made between any person and any Indian tribe or individual Indian does not establish full fiduciary duties since the relationship created thereunder is not comparable in purpose or degree to the control or supervision of tribal monies or properties that has been found to establish a complete fiduciary relationship).

[65] See *supra* text accompanying note 25.

[66] Presumably, the Department of the Interior would have enacted rules and regulations under which the provisions of section 483a would be carried out, with a view toward taking proper care to prevent the approval of improvident loans consistent with the congressional mandate. Unfortunately, this writer has been unable to find any such regulations. The only published regulations, at 25 C.F.R. § 152.34, state simply that "[p]rior to approval of such mortgage or deed of trust, the Secretary shall secure appraisal information as he deems advisable." It appears that this language is directed only at ensuring that the value of the allotted land used as collateral is sufficient to secure the loan in case of default, in order to satisfy creditors. If this is the case, it falls far short of exercising proper care to prevent improvident loans.

[67] Northwest South Dakota Prod. Credit Ass'n v. Smith, 784 F.2d 323, 326 (8th Cir. 1986).

[68] 463 U.S. 206, 225 (1983).

[69] Navajo Tribe v. United States, 624 F.2d 981, 987 (Ct. Cl. 1980). See *supra* notes 30, 32 and accompanying text.

[70] Cramer v. United States, 261 U.S. 219 (1923); American Indians Residing on Maricopa-Ak Chin Res. v. United States, 667 F.2d 980 (Ct. Cl. 1981); Navajo Tribe v. United States, 364 F.2d 320, 322 (Ct. Cl. 1966); Oneida Tribe v. United States, 165 Ct. Cl. 487 (1964); Menominee Tribe v. United States, 101 Ct. Cl. 10, 19 (1944); Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979); Manchester Band of Pomo Indians, Inc. v. United States, 363 F. Supp. 1238 (N.D. Cal. 1973).

[71] See *supra* text accompanying note 32.

[72] See *supra* text accompanying notes 57, 58.

Second, notwithstanding the express trust obligations created by Congress in the two statutes, that the federal trustee is required to make decisions that touch and concern the trust land is itself sufficient to establish a fiduciary relationship because this amounts to sufficient control and supervision over trust property to infer the fiduciary relationship. While the degree of control evidenced in section 483a may not by itself be comprehensive enough to establish affirmative management duties, it most certainly imposes upon the federal trustee the duty to protect and preserve the trust land. These related propositions should make it indisputable that the Secretary of Interior owes strict fiduciary duties in approving mortgages of Indian trust allotments under section 483a.

Trust Responsibilities of the Farmers Home Administration

Thus far, the discussion has centered around the trust responsibilities of the Secretary of the Interior under section 483a. However, findings of the Aberdeen Area Credit Task Force and the National Indian Agricultural Working Group[73] have raised an additional issue with respect to another agency of the federal government, the Farmers Home Administration (FmHA). According to the Task Force report, as of August 1985, there were in the Aberdeen area a total of 875 Indian mortgages, encumbering 421,819 trust acres, with a debt burden of more than $40 million. The FmHA was the lending agency in 610 (70%) of these mortgages, involving approximately 248,390 acres, or 58.8% of the mortgaged trust lands in the area.[74] As of August 1985, the overall rate of loan delinquency stood at approximately 80%.[75]

By October 1986, 477,703 acres had been mortgaged in the Aberdeen area, and the debt burden increased to $45.9 million.[76] The FmHA was by far the biggest lender, holding $27.9 million in mortgages.[77]

The situation is much the same in the Billings area.[78] As of October 1986, there were 377,449 acres of individual trust land under mortgage, with a debt burden of $52.1 million. Again, the

FmHA was the largest lender, holding $16.7 million in mortgages.[79] Moreover, as of March 1987, an estimated 145,450 acres of trust land in Montana and the Dakotas had already been lost or was in the immediate danger of foreclosure by the FmHA.[80]

Thus, to the extent that the FmHA is dealing directly with Indian allottees in the loan transactions involving mortgages of trust lands, the issue arises whether under these circumstances the FmHA itself, as an agency of the United States, owes trust responsibilities to the Indian allottees with whom it deals.

Since it is the United States that stands in the trust relationship,[81] it has been held that *any* federal government action is subject to the United States' fiduciary responsibilities toward the Indian tribes.[82] Thus, where the United States itself owes fiduciary obligations, any agent of the United States would be obligated to carry out the same duties in their dealings with the Indian people.

There is no question that in dealing with Indian people the FmHA, as an agency of the federal trustee, must keep in mind and adhere to that special relationship of guardianship-trust (i.e., the general trust responsibility) existing between the United States and Indian people.[83] But since recent court decisions have distinguished between the existence of the general trust and the establishment of a complete trust relationship with full fiduciary duties,[84] it is necessary to further determine whether the FmHA may be held to the fiduciary standards indicative of a complete trust. This question depends upon whether the United States itself owes complete fiduciary duties in ensuring the protection of the trust land base.

Section 483a specifically delegates approval of the trust land mortgages to the Secretary of the Interior and therefore cannot be used as a basis for imposing fiduciary duties on the FmHA, an agency of the Department of Agriculture. However, the fact that Congress has delegated the trust responsibilities of the United States to the Secretary of the Interior under section 483a cannot of itself constitute an abrogation of the federal trust responsibility as it exists under other sources of law in the absence of express congressional intent to the contrary.[85] The federal trust responsibility is primarily administered through the Department of the Interior and the BIA,[86] but this should not exempt other agencies of the United States from the federal trust responsibility as it otherwise exists, to the extent that those agencies are dealing directly with Indian people and resources.[87] Thus, if a strict fiduciary relationship between the United States and the allottees can be established under some source other than section 483a, the FmHA should be subject to that relationship.

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[73] See *supra* note 8.

[74] Task Force Report, *supra* note 8.

[75] Aberdeen Area Credit Task Force Minutes of Meeting (Aug. 23, 1985).

[76] Fredericks, AIACC Report, *supra* note 8.

[77] *Id.*

[78] The Billings area encompasses all of Indian country in Montana, except the Flathead Indian Reservation in western Montana, and Wyoming.

[79] Fredericks, AIACC Report, *supra* note 8.

[80] NIAWG Final Report, *supra* note 8.

[81] *See* Seminole Nation v. United States, 316 U.S. 286, 297 (1942).

[82] Nance v. Environmental Protection Agency, 645 F.2d 701, 711 (9th Cir. 1981) (EPA owed fiduciary duties to the Crow Tribe in determining whether approval of a redesignation of air quality standards on adjacent Northern Cheyenne Reservation from class II to class I adversely affected Crow Tribe's ability to mine coal). *See* Ute Indian Tribe v. State, 521 F. Supp. 1072, 1141 n.187A (D. Utah 1981) (actions of the United States Forest Service in its dealings with Indians are subject to being judged by the most exacting fiduciary standards of the federal trust responsibility.). *See also* Eric v. Secretary of Dep't of Housing, 464 F. Supp. 44 (D. Alaska 1978).

[83] See *supra* notes 10, 16, 17, and accompanying text.

[84] See *supra* note 11 and accompanying text.

Under the General Allotment Act, it is the United States that holds the land in trust for the sole use and benefit of the allottees.[88] It follows that any agency of the United States coming within the parameters of the General Allotment Act's limited trust as set forth in *Mitchell I* should be subject to strict fiduciary duties in administering the obligations under the trust.

One of the duties established under this limited trust is the prevention of improvident alienation.[89] It seems clear that the FmHA operates under this responsibility in reviewing and approving Indian loan applications under which trust allotments are mortgaged. The FmHA deals directly with the Indian loan applicant, and the transaction concerns the possible alienation of trust land. Under these circumstances, given the existence of the General Allotment Act's limited trust, as well as the traditional application of fiduciary responsibilities where the federal trustee is charged with protecting trust land,[90] it appears clear that the FmHA is subject to strict fiduciary duties in approving loan transactions which involve mortgaged trust land.

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[85] *See* Joint Tribal Council of Passamaquoddy Tribe v. Morton, 528 F.2d 370 (1st Cir. 1975).

[86] Nevada v. United States, 463 U.S. 110 (1983). *See* Ute Indian Tribe v. State, 521 F. Supp. 1072 (D. Utah 1979).

[87] *See* Ute Indian Tribe v. State, 521 F. Supp. 1072, 1141 n.187A (D. Utah 1979).

[88] 25 U.S.C. § 348 (1982).

[89] See *supra* note 4.

[90] *See, e.g.*, Begay v. Albers, 721 F.2d 1274 (10th Cir. 1983); Navajo Tribe v. United States, 364 F.2d 320 (Ct. Cl. 1966); Kenai Oil & Gas, Inc. v. Department of Interior, 522 F. Supp. 521 (D. Utah 1981), *aff'd*, 671 F.2d 383 (10th Cir. 1982); Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979); Smith v. United States, 515 F. Supp. 56 (N.D. Cal. 1978); Coomes v. Adkinson, 414 F. Supp. 975 (D.S.D. 1976).

Thus, the FmHA and the BIA, as agents of the federal trustee, should owe strict fiduciary duties in reviewing and approving mortgages of trust land, to the extent both are directly involved in the transactions.[91] Consequently, the FmHA would not be in the position of a mere creditor in mortgaging Indian lands. Rather, the FmHA stands in the fiduciary capacity of the federal government, and as such must exercise proper care to protect the trust land in approving the mortgages.[92]

Fulfilling the Trust Responsibility

Given that the BIA and the FmHA both owe strict fiduciary duties in reviewing and approving mortgages of trust land, their regulations should reflect these duties in the loan application and approval process. In order to adequately gauge these responsibilities, it is appropriate to examine what must be done in order to fulfill those duties, keeping in mind that the federal trustee serving in a fiduciary capacity must, under the prudent person standard, exercise great care to protect with the trust land.[93]

It is clear that in determining whether to approve or disapprove a proposed mortgage, the federal trustee must take all relevant factors into account. This is so even where the decision is discretionary.[94] Given the risk involved, these factors should be considered with a view toward protecting the trust lands. It follows that the decision maker, whether it be the FmHA or the BIA, should scrutinize each loan application and use a proper degree of care and caution to prevent the approval of improvident loans that would result in the subsequent alienation of the trust land.

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[91] The FmHA and BIA's situation are analogous to that of co-trustees since each agency deals directly with the Indian beneficiary on behalf of the United States. As co-trustees each agency is individually responsible for fulfilling its own fiduciary duties, and the one may not rely on the other to administer the trust. Where there are several trustees, each of them is under a duty to participate in the administration of the trust and to use reasonable care to prevent the co-trustee from committing a breach of trust. *In re* Mueller's Trust, 135 N.W.2d 854, 865-66 (Wis. 1965).

[92] That the FmHA is acting both as lender and federal trustee in this situation raises an additional issue of conflict of interest. As a lender, the federal trustee's interests are potentially adverse to those of the debtor, the Indian beneficiary. Because of this, and because of the government's special duty toward the Indians, the various mortgage transactions must be carefully scrutinized. Navajo Tribe v. United States, 364 F.2d 320, 323 (Ct. Cl. 1966). *See* Pyramid Lake Paiute Tribe v. Morton, 354 F. Supp. 252 (D.D.C. 1972).

[93] *See* 2 A. Scott, Trusts 1408 (3d ed. 1967). Recall that in part I of this article, it was argued that a fiduciary is under a greater duty of care when the transaction involves a risk of alienation of the trust property. In such a case, the prudent person will by definition exercise greater care because caution as to risk of loss is implicit in the word "prudence."

[94] *See* Kenai Oil & Gas, Inc. v. Department of Interior, 671 F.2d 383 (10th Cir. 1982) (where the federal trustee was clothed with discretion in the decision-making process, standard of review was whether decision was arbitrary, capricious, and an abuse of discretion and if trustee *considered all relevant factors* in reaching his decision and made no clear error of judgment, decision could not be overturned).

Loan Repayability. The most important factor that should be taken into account is repayability. In order to adequately protect the mortgaged land, there must be a good prospect for repayment of the loan. Several factors are pertinent in this regard. First, the creditworthiness of the applicant should be determined by examining prior credit history and credit ratings. The higher the credit rating, the lower the risk of default and subsequent foreclosure.

Second, there should be a valid farm plan of operation accompanying each loan package. The most important factor to be examined in the plan of operation is profitability. Obviously, if the enterprise stands little chance of being profitable, there is less chance of repayment. Profitability is the essence of the operation, and it would be foolhardy to enter into any commercial enterprise without an adequate assessment of the prospects for profitability. Certainly, the prudent person would not do so.

In order to adequately assess repayability, it is essential to have a sound knowledge of the agricultural industry. This includes familiarity with the modern-day version of the industry and knowing it well enough to project what is likely to happen in the future.[95] Keeping informed of the impact of current trends in agriculture and planning accordingly is a necessary prerequisite in assuring the viability of the agricultural enterprise.[96]

Thus, for example, BIA employees providing management and technical assistance to Indian farmers should be aware of the market cycles associated with agriculture by accessing market forecasts and information that would enable them to make more accurate predictions concerning agricultural planning.[97] This knowledge of the industry is an essential requisite in providing and adequately assessing farm plans. A prudent person certainly would not be without such knowledge in making decisions concerning his own property, and therefore such knowledge should be imputed to the federal trustee in reviewing agricultural plans of operation.

A third factor in determining the prospect of repayability is a consideration of economic factors affecting risk. For example, operational expenses in a livestock operation may include winter feeding, fencing, fuel, maintenance, leases, labor, and living expenses. An adequate projection of these and other operational expenses for each plan of operation is very important in figuring profitability and repayability. Obviously, any underestimation of operation expenses would create an illusion of increased profit margins. The practical result is that ten years into the operation the actual expenses may have cut so far into income as to reduce or eliminate profitability and thereby increase the risk of default on the loan. In order to prevent this, the federal trustee reviewing the loan package should ensure that a realistic projection of operational expenses has been provided. This would further ensure the integrity and viability of the operation, thereby further providing for the safety of the mortgaged trust land.

Related to the accurate projection of operational expenses in assessing economic factors related to risk is the price of particular agricultural goods produced and sold. In order to realistically predict prices at which goods will be sold, and to determine which type of goods will be more productive, the federal trustee must necessarily be aware of factors such as market trends, current prices, and existing volume, i.e., supply of particular types of agricultural goods.

For example, assume a loan application under which trust lands will be mortgaged is submitted in April and the proposed plan of operation will use loan proceeds to immediately purchase 300 head of yearling cattle. The plan further provides that the yearlings will be fattened on grass over the summer and sold in the fall. The proceeds, after payment of expenses including a payment on the loan will go to the purchase of more yearlings the next spring, again to be fattened for sale, and so on from year to year. However, the current price of yearlings is abnormally high due to increased market (buying) activity over the past three months in yearling cattle. Additionally, market experts have predicted that by fall the price of yearlings will be down substantially due to a glut on the market and that it will take at least five years for the yearling cattle market to recover to its current condition.

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[95] SWACKHAMER & DOLL, FINANCING MODERN AGRICULTURE: BANKING PROBLEMS AND CHALLENGES (1969) (available in the research department of the Federal Reserve Bank, Kansas City).

[96] *Id.*

[97] According to the Bureau of Indian Affairs Manual, the BIA Division of Credit and Financing has staff responsibility for all credit and financing matters, including loans to individual Indians, regardless of the lender. 47 B.I.A.M. § 3.1. The Division of Natural Resources, Office of Land Operations, is responsible for all technical agricultural matters. 47 B.I.A.M. § 3.4. Credit officers are responsible for the financial phases, while the employees of Land Operations are responsible for the planning phases of agricultural loans. 47 B.I.A.M. § 3.4(A)(3).

Presumably, these responsible parties are sufficiently qualified to provide adequate technical assistance in the area of agribusiness. It would seem that in order to fulfill their fiduciary duties in approving mortgages of trust land, the majority of which are taken for agricultural loans, these officers and employees would have to be sufficiently knowledgeable to be able to meet the prudent person standard of care in managing the trust property. Ideally, this means that the person in charge of planning should either be well experienced in agriculture or have a college degree in agribusiness. At least, the law will imply sufficient knowledge and ability on the part of the fiduciary to enable him to make the decisions of a prudent person, regardless of any real limitations. *See In re* Mild's Estate, 136 A.2d 875 (N.J. 1957). The standard of care is strictly objective.

The federal trustee reviewing such a plan should plug these market factors into the plan of operation in ascertaining prospects of profitability and repayability. Undoubtedly the operator is in trouble at the outset and will take a loss under these circumstances. The result will likely be nonpayment on the loan and default, thus placing the mortgaged trust land in danger of alienation through foreclosure. Given the risk involved in such a venture, the prudent federal trustee should turn the loan down in favor of protecting the trust land, or at least amend the plan of operation to include production of a more profitable good.

A fourth factor that should be considered in determining repayability is the repayment schedule for the loan. Typically, agricultural loan payments are made on a yearly basis due to the nature of production periods. Loan payments amortized over longer periods of time result in smaller yearly payments that are easier to meet than those under short amortization periods, which create higher yearly payments. Thus, an amortization period of thirty years would be much more favorable than one over ten years. The effect of longer repayment periods makes it easier for the debtor to meet yearly payment obligations and has the additional benefit of neutralizing the exogenous factors of agriculture (i.e., factors that cannot be controlled, such as cost of goods sold, price, climatic conditions, etc.)[98] By spreading out the debt burden, the Indian farmer is better able to absorb the shock of a bad year or even two or three bad years. Thus, the risk of default is decreased in those loans amortized over longer periods of time. It follows that the shorter the amortization schedule, the greater the risks. The federal trustee in reviewing loan applications under

which trust land will be mortgaged will do well to look for longer amortization periods where possible.[99]

Questionable Past Practices. The factors discussed above are just a few of the relevant considerations in determining whether approving a mortgage of trust land is feasible. It is not yet clear to what extent an involved federal trustee actually considers these and other relevant factors in making that decision. However, at least two serious questions have been raised that if taken as true would place the fulfillment of the federal trust responsibility in grave doubt.

In the late 1970s, a large number of loans were made by the FmHA to Indian farmers under which trust lands were mortgaged and proceeds used to pay off prior bank (chattel) loans. The Fort Berthold Land and Livestock Association[100] has alleged that these loans were made under time constraints with very little planning and management and were amortized over short periods of time resulting in immediate delinquency.[101] Emergency short-term loans, hastily reviewed and approved and used to bail out prior obligations, are definitely not the sort of transaction in which trust lands should be mortgaged. There is obviously greater risk involved as a result of the short amortization period (resulting in high annual payments), as well as the fact that no additional value other than forgiving a prior debt is received. Moreover, there is an inherent risk because these were emergency disaster-type loans. Obviously such loans were not taken under the best of circumstances. It would seem that allowing trust lands to be taken as security in such a case would be a flagrant disregard of the federal trustee's obligation to protect and preserve the trust land.

In addition, several persons have reported that it has been the practice of the FmHA to approve agricultural loans based only upon the value of collateral, without consideration of earning capacity or repayability.[102] It was the FmHA's position that loans based upon earning capacity were too hard to obtain and that loans based upon adequacy of security were much more liberal and allowed for larger loans. Notwithstanding the lack of foresight in such an analysis, if the FmHA approved any loans involving mortgaged trust lands on this basis, and the BIA did likewise, such conduct would not even withstand analysis under the arbitrary, capricious, or unreasonable standard of review.[103]

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[98] *See* S. REDFIELD, VANISHING FARMLAND: A LEGAL SOLUTION FOR THE STATES, at xvi (1984).

[99] The Indian Finance Act of 1974, 25 U.S.C. §§ 1451-1543, provides that loans may be for terms up to thirty years. 25 U.S.C. § 1464. Since land is not depreciable, real estate mortgages typically run for thirty years. It would seem that any time trust land is mortgaged, the federal trustee would require this thirty-year amortization schedule in order to place the risk of default at a minimum.

[100] The Fort Berthold Indian Reservation is located in western North Dakota. As with all the Indian reservations in the Aberdeen area, agriculture is a major economic enterprise.

[101] Fort Berthold Land & Livestock Ass'n, Resolution No. 14-84 (Feb. 14, 1984).

[102] This information is based on reports from a meeting at Bismark, North Dakota, between Indian cattlemen and officials of the BIA and FmHA, held on Mar. 11, 1986.

Furthermore, it appears to have been the practice of the BIA to approve trust land mortgages for FmHA loans with little or no analysis of loan applications. At least in the Aberdeen area, the BIA does not review or conduct analysis on FmHA loans.[104] The failure of the BIA to conduct any independent review of trust land mortgages most certainly constitutes a breach of fiduciary duty.[105] The BIA has been charged with a most important fiduciary duty—to protect the Indian land base. In order to ensure adequate protection, it is imperative that the reviewing officials have a meaningful record before them at the time the decision to approve a trust land mortgage is rendered. All factors affecting repayability must be adequately scrutinized to protect the trust lands from improvident alienation. Anything less is unacceptable.

Finally, that nearly 80 percent of the trust land mortgages are currently in a state of delinquency in the Aberdeen area itself indicates a lack of care in approving the mortgages. It is hard to believe that proper care and caution were used to prevent improvident alienation of these trust lands when so many are currently in danger of foreclosure.

III. *Remedies Available to Indian Farmers Facing Foreclosure*

It should be clear by now that Indian farmers in danger of losing their land through foreclosure are not without hope. Serious issus have been raised concerning the role of the federal trustee in allowing trust land to be put in such danger of alienation. At this time, these issues remain unanswered. Yet, it is essential that the Indian farmer be aware that he is not without rights and that he does not stand alone in facing this potential disaster.

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[103] See *supra* note 82.

[104] Letter from Acting Area Director Melvin Rousseau to Senator Kent Conrad (Aug. 31, 1987) (responding to concerns regarding potential loss of trust lands through mortgage foreclosure).

[105] *See* Assiniboine & Sioux Tribes v. Board of Oil & Gas Conserv., 792 F.2d 782 (9th Cir. 1986).

Judicial Alternatives

Given the magnitude of the problem, the prospect of a class action on behalf of Indian farmers who have trust lands under mortgage in the Aberdeen area seems appealing. The theory of liability would be breach of fiduciary duty by the United States, acting through the BIA and the FmHA. There are several alternatives that may be used to get judicial relief in such cases.

One alternative is a *Mitchell II*-type of action asserted in the United States Court of Claims. In *Mitchell II*, a claim for monetary damages for breach of trust was asserted under the Tucker Act.[106] By giving the Court of Claims jurisdiction over specific types of claims against the United States, the Tucker Act constitutes a waiver of the United States' sovereign immunity with respect to those claims.[107] However, the Court held in *Mitchell II* that the Tucker Act does not create any substantive right enforceable against the United States for monetary damages. A substantive right must be found in some other source of law, such as "the Constitution, or any Act of Congress, or any regulation of an executive department."[108] In order for a claim to be cognizable under the Tucker Act, the claimant must demonstrate that the source of substantive law he relies on can fairly be interpreted as mandating compensation by the federal government for the damage sustained.[109] This test will be satisfied where the claimant can show that the source of law he is relying on establishes a fiduciary relationship and defines the contours of the United States' fiduciary responsibilities. This is so because once the trust relationship is established, it naturally follows that the government should be liable in damages for breach of its fiduciary duties.[110]

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[106] The Tucker Act is codified at 28 U.S.C. § 1491 and states in pertinent part:

> The United States Claims Court shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

28 U.S.C. § 1491(a)(1) (1982).

A counterpart to the Tucker Act is the Indian Tucker Act, 28 U.S.C. § 1505, which gives any "tribe, band, or other identifiable group of American Indians" the same access to the Court of Claims provided to individual claimants under the Tucker Act. Claimants asserting a *Mitchell II*-type action should rely on both these statutes because as a class they may be considered an identifiable group under the Indian Tucker Act. *See* Fields v. United States, 423 F.2d 380 (Ct. Cl. 1970).

[107] Mitchell v. United States, 463 U.S. 206, 212 (1983) (*Mitchell II*).

[108] *Id.* at 216.

[109] *Id.* at 216-17.

The substantive law that could be relied on by the injured Indian farmers in this case would be the General Allotment Act, section 483a, and all applicable rules and regulations thereunder, as well as other statutes and regulations affecting credit and finance in Indian agriculture.[111] As argued in part II of this article, the General Allotment Act and section 483a established fiduciary duties upon the government to prevent improvident alienation of allotted trust land. To the extent the claimants come within the parameter of this so-called limited trust, there should be a fiduciary relationship established, and therefore the claimants should be able to assert a claim under the theory of *Mitchell II.*

There is, however, one problem with such an action in that the claimants would be suing for monetary damages. As the situation now stands, most of the trust land under mortgage in the Aberdeen area has not yet been alienated through foreclosure. Until it is, the affected Indian farmers arguably would not be measurably damaged. In order to adequately assess damages, it appears that the claimants would have to wait until their land was taken before asserting a *Mitchell II*-type claim. It is unlikely that such a result would be very satisfying since the Indian farmers are probably looking to retain their land and their way of life rather than be compensated for its loss.[112]

A better alternative for those who still retain their land is to seek equitable relief whereby the improperly mortgaged trust land would not be subject to foreclosure actions. The best course of action in this regard would be to seek both declaratory and injunctive relief.[113] The plaintiffs would seek a declaration that (1) the United States owes fiduciary duties in approving mortgages of trust land, and (2) the federal trustee breached those duties in approving improvident mortgages, thus placing the trust land in danger of alienation. The plaintiffs would then seek an injunction against foreclosure on all the affected trust lands.

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[110] *Id.* at 224-26.

[111] *See, e.g.*, 25 U.S.C. §§ 1451-1453 (1982); 25 C.F.R. §§ 101.1-101.25; 47 B.I.A.M. § 3.0.

[112] On the other hand, it is arguable that damages could be measured by determining the amount necessary to satisfy the mortgage. This would obviously make the Indian debtor whole and put him back in the position he would have occupied but for the approval of the improvident loan.

[113] *See, e.g.*, Smith v. United States, 515 F. Supp. 56 (N.D. Cal. 1978); Pyramid Lake Paiute Tribe v. Morton, 354 F. Supp. 252 (D.D.C. 1972).

Jurisdiction in federal district court would be predicated on section 1331 as a federal question,[114] on the Declaratory Judgment Act,[115] and on the Administrative Procedure Act.[116] The scope of the United States' fiduciary duty in administering the trust property is considered a question of federal law and thus jurisdiction would lie under section 1331.[117] Further, under the Declaratory Judgment Act and the Administrative Procedure Act, the district court would have the authority to determine the legal relationships and review the actions of the BIA and FmHA in approving mortgages of trust land,[118] and to set them aside if found to be unlawful.

An equitable remedy of this or a similar type seems more attractive than a damages remedy under the Tucker Act. There is clearly more benefit in a remedy that would allow the Indian farmers to keep their most precious resource, their land base. The effect of the injunction would be to remove the cloud over the title to the land and allow the agribusinessmen to focus their efforts on starting anew, free from the constant threat that they may be put out of business at any time.

Nonjudicial Alternatives

Obviously, if the federal government and the Indian farmers could come to a mutual agreement aimed at rescuing the endangered trust lands, there would be no need to seek legal redress. The question is whether the federal government is willing to recognize the magnitude of the problem and take appropriate action in order to properly fulfill its trust responsibility, which has already been placed in doubt.

The federal government has become aware of the problem. A fact-finding forum on Indian agriculture was conducted at the Fort Berthold Reservation by the Senate Agriculture Committee, chaired by Senator Kent Conrad of North Dakota.[119] At that forum, Senator Conrad expressed concern over the apparent lack of meaningful reviews of trust land mortgages by the BIA.[120]

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[114] 28 U.S.C. § 1331 (1982).

[115] *Id.* § 2201.

[116] 5 U.S.C. §§ 701-706 (1982).

[117] United States v. Mason, 412 U.S. 391 (1973). *See* National Farmers Union Ins. Co's. v. Crow Tribe, 471 U.S. 845 (1985).

In addition, the federal statutes under which the fiduciary duty is established would also provide federal question jurisdiction.

[118] 28 U.S.C. § 2201 (Supp. 1985); 5 U.S.C. § 706 (1982). *See* Goodface v. Grassrope, 708 F.2d 335 (8th Cir. 1983) (district court had jurisdiction to review action taken by the BIA in refusing to recognize either a tribal council whose members were elected in 1980 or a council elected in 1982).

The Aberdeen Area Credit Task Force and the National Indian Agricultural Working Group have also studied the problem and have come up with a number of proposed solutions. As an immediate solution, the Task Force recommends that the BIA, working in conjunction with the FmHA and other lenders, develop and implement a program that provides for restructuring of problem loans with a set-aside of funding for cash flow operations.[121] This plan would require a transfer of funds from the FmHA to the BIA under which the BIA would, pursuant to the Indian Financing Act,[122] pay out existing loans based on fair market value of collateral and loan additional dollars to generate more cash flow for continued farm operations.[123] The Task Force also recommended that the BIA work with lenders in refinancing current debt through re-amortization of loan agreements, including discounting loans without penalty or interest.[124] The intention of this proposal is to revitalize agricultural operations and try to salvage and make productive that which otherwise would be lost. Such a plan seems reasonable, but whether the BIA will go along with it remains to be seen. However, with respect to trust land mortgages, it would seem that the BIA would be more than willing to accommodate this plan, if for no other reason than to avoid the expense and possible liability of the lawsuit that will almost certainly be brought in an attempt to save the trust lands.

In addition, the Task Force recommended development of a program to educate Indian agribusinessmen on the effective use of credit, including the development of an intense training program for Agency credit personnel in agricultural and related business that would give the credit personnel the expertise they need in financing Indian agriculture.[125] Here the Task Force is merely asking the BIA to do what it is responsible for in the first instance, that is, to be sufficiently knowledgeable in the business of agriculture to be able to make the sound decisions of a prudent person and thereby carry out its trust responsibilities. Knowledge of the industry is not merely a goal; it is an essential requirement in fulfilling the trust responsibility with respect to the financing of Indian agriculture. Given the fact that agriculture plays such an important role in so much of Indian country, it seems incomprehensible that the BIA as federal trustee would employ personnel with so little knowledge and experience in agribusiness at these crucial positions. If it does turn out that these key personnel were without sufficient knowledge and feel for agriculture, it will be the federal trustee and not the Indian beneficiary who suffers. The federal trustee is, as a fiduciary, held to a prudent person standard, and such knowledge of agribusiness will be imputed, regardless of any actual deficiencies.[126]

The National Indian Agricultural Working Group has made similar recommendations.[127] The Working Group has further recommended that the BIA and the FmHA work together to find solutions to prevent the potential erosion of the Indian land base.[128] More important, the Working Group recommends that the FmHA's trust responsibility be clarified and that its policies and procedures be reviewed to ensure adequate protection of trust resources in those cases where FmHA acts as the lender for Indian agriculture and loans.[129] The same should be done within the regulatory scheme of the BIA.

In the final analysis, the federal trustee still has a chance to cure what may well be a serious breach of trust. It is undisputed that many Indian trust lands "are in danger of foreclosure, presenting a serious threat to reservation economies and their trust land base."[130] Serious allegations have been made with respect to the circumstances under which these trust mortgages were executed. Undoubtedly, Indian agribusinessmen will not remain passive and watch their lands disappear. If nothing else, this article has raised the issues upon which the battle lines will be drawn. It is hoped that the precious land base of the Indian people will be preserved, and the tragic history of the many federal Indian land takings will not be repeated.

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[119] Senate Comm. on Agriculture, 100th Cong., 1st Sess., Fact Finding Forum on Indian Agriculture (Sept. 1, 1987) (Before Honorable Kent Conrad, United States Senator, at New Town, North Dakota).

[120] *Id.*, transcripts at 71-76.

[121] Task Force Report, *supra* note 8, at 3.

[122] 25 U.S.C. §§ 1451-1453 (1982).

[123] Task Force Report, *supra* note 8, at 3.

[124] *Id.*

[125] *Id.*

[126] See *supra* text accompanying note 85.

[127] NIAWG Final Report, *supra* note 8, at 43-44.

[128] *Id.*

[129] *Id.* at 48-49.

[130] *Id.* at 48.

Conclusion

The United States has charged itself with solemn trust responsibilities in protecting and preserving the Indian land retained in trust. Although the General Allotment Act attempted to extinguish traditional tribal property concepts, the federal trust responsibility to individual Indian owners to protect the land from improvident alienation remains. The mortgaging of trust lands undoubtedly involves a risk of alienation, and the federal trustee reviewing and approving such mortgages must closely evaluate each plan of operation with a view toward protection of the trust property. In order to adequately carry out his fudiciary duties in this regard, the federal trustee as a prudent person must have a sound knowledge of the agricultural industry and must exercise proper caution in evaluating the risks involved.

The extent to which the federal trustee has fulfilled his fiduciary obligations in approving mortgages of trust land is an issue yet unresolved. However, given the circumstances under which some of these mortgages were executed, and their status today, grave doubts have arisen. Indian agribusinessmen do not stand alone in their struggle to preserve their way of life. The federal trustee must be held accountable and should now make every effort to salvage those mortgaged trust lands which face the real and immediate danger of being lost forever. To the extent that the federal trustee has failed to fulfill his fiduciary obligation to protect and preserve the trust land, the Indian beneficiary should not be made to suffer the consequences. The goal is preservation, and every effort should be made and every remedy sought to achieve it. After all, the land is sacred.

JULY 10, 1989.

Honorable KENT CONRAD,
U.S. Senator, c/o Christine Sarcone, Chief Clerk, Senate Committee on Agriculture, Nutrition, and Forestry, Russell Senate Office Building, Washington, DC.

DEAR HONORABLE CONRAD: I'm enclosing Farm Credit Services idea of the "First Right of Refusal" law. We are still battling with them over our land. We do have the financing to pay for it.

We were very pleased with the hearing in Bismarck. We feel it was beneficial to the farmers. We are very anxious to see the future results.

Thank you again for the copy of the transcript of the hearing, we really appreciated it.

Sincerely yours,

MRS. LEROY (MERLE) KALENZE.

[Enclosed attachment, Right of First Refusal, follows:]

FARM CREDIT SERVICES OF MINOT,
Minot, ND, November 22, 1988.

Mr. & Mrs. LEROY KALENZE, JR.,
Berthold, ND

Re: Right of First Refusal.

DEAR MR. & MRS. KALENZE: The Farm Credit Bank of St. Paul has elected to sell property which you previously owned, and described as follows: (see attachment A).

Under the Agricultural Credit Act of 1987 (the "Act"), you are given a right of first refusal to repurchase this property.

You may purchase the property at the appraised fair market value which is (see attachment A). A check for 5 percent of the purchase price must accompany the offer as earnest money.

Your rights to purchase the property are as follows:

1. If you do not wish to purchase the property at the appraisal value of (see attachment A), you may offer to purchase the property at a price less than appraisal value, (see attachment A).

2. Your offer to purchase at less than appraisal value of (see attachment A) must be submitted within 30 days after you receive this letter.

3. If your offer is less than appraisal value (see attachment A), the Act says we may either accept or reject your offer.

(a) If we accept, we will close within 30 days of the date of acceptance of the offer.

(b) If we reject your offer, we will notify you within 30 days of receiving your offer.

i. If your offer is rejected, we will "hold it" pending receipt of other offers.

ii. If another offer is received that is higher than yours, the property will be sold to that person without further notice to you.

iii. If we accept an offer from another person at a price equal or less than your offer, we will come back to you again with another opportunity to purchase the property. The terms and conditions to you will be the same as offered to the other person. Financing is not a "term or condition" under the Act, and we may offer financing to other parties without offering it to you. This opportunity to purchase works as follows:

(aa) You may resubmit an offer at the same price and same terms and conditions as offered to the third party. (Again, financing is not a "term or condition" that has to be the same for you and the other person. We can finance the third party but refuse to finance you.)

(bb) If you do submit such an offer, we must accept it. If we accept it, we are not obligated to offer you financing and may insist on cash at the closing.

If we do not receive an offer in writing from you (either at appraised value or less) within 30 days from the day you receive this letter, you lose your right of first refusal and we may sell the property to any person at any time without further notice given to you.

This is an important right and we encourage you to consult with an attorney if you wish to exercise it before the 30 days expire.

Sincerely,

RUSSELL ROGNE,
Properties Director.

[Enclosed attachment A follows:]

ATTACHMENT A—WARD COUNTY, ND

Legal description	Appraised value
Section 15-154-86: All	$66,600
Section 16-154-86: All	54,200
Section 22-154-86: All	69,700
Section 23-154-86: S½	26,000
Section 32-155-86: NW¼	30,000

FARM CREDIT SERVICES OF MINOT,
Minot, ND, March 9, 1989.

Mr. & Mrs. LEROY KALENZE, Jr.,
Berthold, ND
Re: Right of First Refusal.

DEAR MR. & MRS. KALENZE: The Farm Credit Bank of St. Paul has elected to sell property which you previously owned, and described as follows: (see attachment A).

Under the Agricultural Credit Act of 1987 (the "Act"), you are given a right of first refusal to repurchase this property.

You may purchase the property at the appraised fair market value which is (see attachment A). A check for 5 percent of the purchase price must accompany the offer as earnest money.

Your rights to purchase the property are as follows:

1. If you do not wish to purchase the property at the appraisal value of (see attachment A), you may offer to purchase the property at a price less than appraisal value (see attachment A).

2. Your offer to purchase at less than appraisal value of (see attachment A) must be submitted within 30 days after you receive this letter.

3. If your offer is less than appraisal value (see attachment A), the Act says we may either accept or reject your offer.

(a) If we accept, we will close within 30 days of the date of acceptance of the offer.

(b) If we reject your offer, we will notify you within 30 days of receiving your offer.

i. If your offer is rejected, we will "hold it" pending receipt of other offers.

ii. If another offer is received that is higher than yours, the property will be sold to that person without further notice to you.

iii. If we accept an offer from another person at a price equal or less than your offer, we will come back to you again with another opportunity to purchase the property. The terms and conditions to you will be the same as offered to the other person. Financing is not a "term or condition" under the Act, and we may offer financing to other parties without offering it to you. This opportunity to purchase works as follows:

(aa) You may resubmit an offer at the same price and same terms and conditions as offered to the third party. (Again, financing is not a "term or condition" that has to be the same for you and the other person. We can finance the third party but refuse to finance you.)

(bb) If you do submit such an offer, we must accept it. If we accept it, we are not obligated to offer you financing and may insist on cash at the closing.

If we do not receive an offer in writing from you (either at appraised value or less) within 30 days from the day you receive this letter, you lose your right of first refusal and we may sell the property to any person at any time without further notice given to you.

This is an important right and we encourage you to consult with an attorney if you wish to exercise it before the 30 days expire.

Sincerely,

RUSSELL ROGNE,
Properties Director.

[Enclosed attachment A follows:]

ATTACHMENT A—WARD COUNTY, ND

Legal description	Appraised value
Section 22-154-86: NW¼, S½	
Section 23-154-86: S½	$65,500
Section 22-154-86: NE¼	30,200

Prepared Statement of Victor and Frances Zajac, Mantador, ND

We tried to settle with the Federal land bank in the fall of 1987. We paid $3,000 to fix up a restructure plan which they turned down. They didn't tell us how they wanted it done or how to do it.

We offered them $50,000 then and $50,000 after the first of the year. Our loan was $325,000. We want to buy it back. Its been in our family for four generations and we don't want to lose it. We had it appraised, they did too, but they had it so high. They want our free and clear land. We are 65 and 70 years old and need that to live on.

They want to sell our land and sell it to the rich people.

They sell it cheaper to a stranger than to the guy that owns it.

Prepared Statement of Ray and Arlene Kramer, Strasburg, ND

OUR PROBLEMS WITH FARM CREDIT SERVICES, PRODUCTION CREDIT AND FARMERS HOME ADMINISTRATION

We had a loan with Production Credit of Mandan, North Dakota from the early 60's through the 70's when we could finally pay it all off, then in the early 80's we needed to make another loan with them. They got a monthly dairy assignment plus all grain and cattle sold. We have never been delinquent on our loan, when in 1984 they called in our loan, because of some other debits we had that in no way effected them, but said they would foreclose on us and pushed us (in fact suggested) into a chapter 11. Since the chapter 11 plan was completed they still get all their payments as before and chapter 11 never put them into a buy down or lower interest like it did to some of our other creditors. And yet they (P.C.A.) has never borrowed us any more money or ever helped us in anyway. We had hail and wind storm wipe us out in 1981 and 1982. Had hail take our crop 100 percent in 1986 and 1987, then in 1988 was the drought, we had no hay or grain crop of any kind. But we did go to Farm Credit (P.C.A.) for a loan to buy feed for our milk cows (which is our main income) they turned us down every time. So we ended up borrowing from other sources and higher interest. So we just go on year in and year out not making any headway, just barely being able to pay interest and nothing on the principle no matter where we make payments. Thank God for our local farmer's elevator people that are very understanding and give us credit to buy feed for our milk cows. Without them it would be impossible, they take whatever small payments we can make and just keep on giving us feed, supplies and our diesel fuel to put out our crop, but this can't go on forever, someday they will need their money too.

Then in February of this year, 1989, we applied for a Farmers Home Administration loan, the low interest or regular loan, after 3 months of runaround and redtape we finally got everything together and completed the loan application packet, just this week, April 26, 1989, we got a letter from FmHA stating that we were rejected and did not qualify for a loan from them. Using every excuse in the books.

If Farm Credit Services, Farmers Home Administration and Production Credit don't help us farmers, just where are we suppose to go for help?

Prepared Statement of John O. Anstrom, Baldwin, ND

Dear Kent: I have just received a letter from FmHA. This letter informs me that I am not going to be considered for an operating loan. This letter offers as an excuse that my management skills are no good. In 1983 any decision that I made other than what they wanted was no good. I wanted to seed one-third wheat, one-third corn, one-third sunflowers. They wanted me to follow the Government farm program, or PIK as it was called, and this cost me several thousand dollars.

I also feel that the tone of the letter degrades my person. It is very uncomplimentary in several ways and just plain rude in others.

Webster's dictionary defines character as moral excellence and strength, industry as systematic labor and diligence as working hard and steadily.

I am of the impression that a bankruptcy is supposed to wipe out your credit history.

I would like to know when I had land taken through foreclosure. This is just more of the same kind of help I have received from FmHA for many years.

I feel that the Burleigh County FmHA office is the poorest run and managed in the State of North Dakota. This office should be investigated thoroughly and closely for more incidents such as this in loan review and approval or disapproval. How some of these decisions are made must be by the flip of a coin or lack of knowledge.

I am very sure that the County Supervisor does not like me and has not tried to help or assist me with any problems he may think I have. I only learned of poor management after a loan request was denied. This is a poor time to inform someone of a problem. The FmHA in this manner does not help but only seals a farmers death as a farmer. The best way to run FmHA is not to take good management decisions and degrade them and dismiss them.

It is interesting to note that I made all payments on time or early until 1983. I was told in 1983 that I would not receive an operating loan unless I followed the Government program. 1983 was when I started to fall short of on a good cash-flow. 1984 was the first year I could not make my payments because FmHA would not allow me to make my own farming decisions, this is when poor management may have started.

Talk of poor management FmHA sold machinery they valued at $7,000 for $1,200. I would suppose this to FmHA is good management. Land they valued at $140,000 can be purchased for $93,000. More examples of good management? I can only guess how many more incidents like this are there. FmHA should not scold farmers for their decisions until they straighten out their own poor management.

[Attached letter to John O. Anstrom from FmHA, follows:]

U.S. Department of Agriculture,
Farmers Home Administration,
Bismarck, ND, April 12, 1989.

John O. Anstrom,
Baldwin, ND.

Dear Mr. Anstrom: After careful consideration, we regret that we are unable to act favorably on your request for a operating loan. The specific reasons for our decision are:

1. The County Committee is of the opinion that you do not have the character and industry considering past credit history including foreclosures, bankruptcies, and past debt repayment records to carry out the proposed operation.
2. In addition, the Committee is of the opinion that you lack the management ability to carry out the proposed operation.

If you have any questions concerning the decision or the facts used in making our decision and desire further explanation, you may call or write the County Office (250-4367) to request a meeting with the County Committee within 15 calendar days of the date of this letter. You should present any new information or evidence along with possible alternatives for our consideration. You may also bring a representative (or legal counsel) with you. You also have the right to appeal this decision to a hearing officer in lieu of, or in addition to, a meeting with the County Committee. See attachment for your appeal rights.

If you do not wish a meeting, as outlined above, a request for an Administrative Appeal should be sent to: Area Supervisor, National Appeals Staff, FmHA, 2490 West 26th Ave., Suite 180-A, Denver, CO 80211, postmarked no later than May 12, 1989. Requests which are postmarked by the U.S. Postal Service on or before that date will be considered as timely received. Please include a copy of this letter with your request for appeal.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

W. STERLING BREUER,
County Supervisor for the County Committee.

Attachment.

APPEALS OF ADVERSE ACTION

The decision described in the attached letter did not grant you the FmHA assistance you requested or will terminate the assistance you are presently receiving. You have the right to appeal this decision and to have a hearing or a review in lieu of a hearing. In order for this decision to be changed, you will have to show why the decision should be reversed. If you wish to appeal the decision, the request for a hearing must be received in the office of the Area Supervisor, National Appeals Staff at the address shown in the letter to you informing you of the adverse decision and your appeal rights postmarked within 30 days after the date of that letter. If you wish to meet with the decisionmaker first, you will be informed of your further appeal rights at the conclusion of that meeting and given 30 days to request a hearing.

The hearing will generally be held within 45 days of the receipt of your request. You or your representative or counsel may contact this office anytime during regular office hours in the 10 days following the receipt of your request for a hearing to examine or copy relevant nonconfidential material in your file. Photostatic copies will be provided in accordance with the Freedom of Information Act. Your representative or counsel should have your written authorization to represent you and review your file.

No earlier than 11 days after the Area Supervisor received your request for appeal, we will forward the file and any additional documents to the Hearing Officer designated by the Area Supervisor to conduct your hearing.

The Hearing Officer will contact you regarding a time and place for the hearing. You may have a representative or counsel with you and may present your own witnesses. The FmHA decisionmaker or representative will be there and available for you to question, as will all other witnesses presented by FmHA. If you wish to have other FmHA employees present as your witnesses, let the Hearing Officer know and, if possible, they will be there.

You may also request a teleconference hearing in lieu of a face to face hearing.

FmHA will record the hearing. You may request a copy of the tape. You may also tape record the hearing. You may request FmHA to have a transcript of the tape made at your expense.

At any time before the scheduled hearing, you may request that the Hearing Officer make a decision without a hearing. If you do, the Hearing Officer's decision will be based on the FmHA file, any written statements or evidence you may provide, and any additional information the Hearing Officer thinks necessary.

The Hearing Officer will advise you by letter of the decision made, the reasons for it, and, if your request for assistance is not granted, what further administrative appeals may be available to you.

A more complete description of the hearing (A Guide to Conducting an Appeals Hearing) may be obtained from any FmHA office.

If your denial involves an appraisal related to farmer program primary loan servicing programs, you may request an independent appraisal as part of your appeal from a list of appraisers provided by your County Supervisor. The cost of the appraisal is your expense.

PREPARED STATEMENT OF JOHN WENTWORTH, FARMER, COGSWELL, ND

Mr. Chairman and members of the Senate Agriculture Committee. My name is John Wentworth and I farm near Cogswell, ND.

Our lender obtained a 90 percent Guaranteed EE Loan which was approved by the County Supervisor on May 23, 1984. This loan was set up with seven (7) yearly payments of over $52,000 with the first payment scheduled for March 6, 1985 (see exhibit 3).

FmHA was notified by the Bank of payments applied to the guaranteed note as of December 17, 1984 (see exhibit 6). On December 17, 1984, a demand note was issued by the Bank without FmHA's written approval. FmHA was notified by the Bank on February 27, 1985, that as of December 23, 1984, I was in arrears $12,820.23, which is more than two (2) months before the first payment was due (see exhibit 13).

The misapplication of the 1985 calf crop in the sum of approximately $52,000 placed me in default as to the guaranteed note. This action of the Bank, which placed me in default, became known as FmHA shortly after it took place.

A letter was sent to the FmHA State office on January 12, 1988, asking about recent legislation pertaining the FmHA programs. A reply letter written by John Bergan, Acting Chief of Farmer Programs dated January 15, 1988, stating that the State office had not received any regulations is enclosed (see letter enclosed). I had no meetings at any time with FmHA about any options available to me at this time. I also did not receive a letter from FmHA as to my loan being placed in acceleration.

The original note was made in excess of the value of the chattel. Copies of the Appraisal of chattel property are enclosed on Form FmHA 440-21. (See Deposition exhibit 13.) At the time of liquidation, the chattel property did not bring anywhere near this amount as FmHA paid the Bank in excess of $112,000.

We do not want to see the Farmers Home Administration turned into the Banker's Home Administration at the expense of the taxpayers with the victim being the farmer who will be put out of business at the expense of the taxpayers. I feel the Office of Inspector General (OIG) should investigate the Sargent County FmHA office and Wynn Rasmussen—the County Supervisor—who is literally helping the local Bank rob the taxpayers and put farmers out of business.

[Exhibit 3, exhibit 6, exhibit 13, exhibit E, and letter referred to, follow:]

[illegible]OMISSORY NOTE:

☐ Fixed Rate
☒ Variable Rate

☒ Single Advance
☐ Multiple Advance

☒ Business or Agricultural
☐ ______

☐ Demand
☐ ______ Fixed Maturity Date

CAUTION: SEPARATE TRUTH IN LENDING DISCLOSURES ARE NECESSARY UNLESS TRANSACTION EXEMPT UNDER 12 C F R 226.3

The undersigned Borrower (if more than one, jointly and severally, and hereafter referred to as Borrower) promises to pay to the order of

Sargent County bank
Lender

at Forman, ND 58032

Date 3-6-84, 19___
LOAN NO ______
RENL OF ______
INDEX RATE ______ % (as of the date hereof)

Borrower(s) Name(s) and Address(es)
John Wentworth
Cogswell, ND 58017

PRINCIPAL AND INTEREST

☒ the principal sum of ______ $ 225,000.00

☐ the amount of the principal advance made by the Lender to the Borrower on the date hereof ______ $ ______
plus advances made to Borrower from time to time hereafter pursuant to the line of credit (or equivalent) agreement dated ______, 19___
less any payments made by Borrower on this note hereafter allocated to principal, subject to a maximum principal indebtedness at any one time of ______ $ ______

The unpaid principal balances remaining from time to time shall bear INTEREST, computed daily, at an annual rate of ______ %

☐ The above interest rate shall be fixed until this note is paid in full subject to any post maturity interest rate specified below.

☒ Subject to any maximum and minimum rates specified below, the above interest rate on this note shall from time to time hereafter be adjusted to be ______ 3 % in excess of the following selected INDEX RATE

☐ The discount rate on 90 day commercial paper in effect at the Federal Reserve Bank of ______

☐ The rate of interest for short term unsecured loans to businesses with highest credit standing (commonly referred to as the Prime Rate) established by ______

☒ Bank of No Dak, Prime

☒ Changes hereafter in the INDEX RATE shall take effect on this note on the:

☐ same day
☐ day following the day
☒ December 10th & March 6th

such changes in the INDEX RATE take effect, and shall thereafter remain in effect until and including the day preceding the next adjustment date

☒ The interest rate on this note shall not, for any one day, exceed the following annual rate ______ 20 %

☒ The interest rate on this note shall not, for any one day, be less than the following annual rate ______ 10 %

☒ The interest rate on this note after maturity, including maturity by acceleration, shall be:

☐ The interest rate, without adjustment after maturity, in effect at maturity;

☐ An annual rate, without adjustment after maturity, equal to ______ %

☒ At an annual rate, with adjustments determined on the same basis as the rate before maturity.

PAYMENTS AND SECURITY

Accrued interest shall be paid (select one or more)

☐ monthly beginning on ______, 19___ and the same day of each month thereafter; and

☐ quarterly beginning ______, 19___ and on the same day of each third month thereafter; and

☐ semiannually beginning ______, 19___ and on the same day of each sixth month thereafter; and

☒ March 6th, of each year

☐ at maturity, including maturity upon acceleration after default and, if applicable, on demand

Principal shall be payable:

☐ on demand;

☐ on demand, but if no demand is made then on ______, 19___

☒ by installments beginning March 6th, 1985, 19___
and on the same day of each year
thereafter each in an amount not less than $52,476/38
including interest
~~[illegible]~~ until 3-6-91, 19___ when the entire unpaid balance of principal and interest shall be due and payable

☐ ______ $ ______

This promissory note is:

☐ not secured (except for Lender's right of set off).

☒ secured (in addition to Lender's right of set off) by a

☐ Mortgage or equivalent lien on Real Estate dated ______, 19___

☒ Security interest in one or more types of personal property effective July 6th, 82

Notwithstanding anything to the contrary contained herein, all payments made by Borrower to Lender hereafter shall be applied first toward interest and the balance toward principal.

Borrower may prepay this note at any time prior to maturity without penalty, but any partial prepayments shall not relieve or diminish any scheduled subsequent payments of principal or interest until all obligations are paid in full.

Except where prohibited by law, the Borrower promises to pay all costs of collection, including but not limited to reasonable attorney's fees, paid or incurred by the Lender on account of such collection, whether or not suit is filed with respect thereto.

Borrower hereby warrants and represents that the proceeds of this note will be used solely for the following purposes: Renewal

ANY SEPARATE CLAUSE OR SENTENCE ON THIS NOTE PRECEDED BY A ☒ IS AN OPTION TO BE SELECTED AND MARKED BY THE PARTIES HERETO AT THE TIME OF SIGNING. ANY OPTION NOT MARKED IS NOT APPLICABLE.

ADDITIONAL TERMS

SET OFF — Lender may at any time before or after default exercise its right to set off all or any portion of the indebtedness evidenced hereby against any liability or indebtedness of the Lender to the Borrower [illegible] owned by the Borrower alone or in conjunction with any other person or entity, provided that the Borrower has a beneficial interest therein, without prior notice to the Borrower.

DEFAULT AND ACCEL[illegible] — The Borrower shall be in default upon the occurrence of any one or more of any of the following events: (1) the Borrower shall fail to pay, when due, any amount required hereunder, or any other indebtedness of the Borrower to the Lender or any third parties; (2) the Borrower shall be in default in the performance of any covenant or obligation under the line of credit or equivalent agreement for future advances (if applicable) or any document or agreement related thereto; (3) any warranty or representation made by the Borrower shall prove to be false or misleading in any respect; (4) the Borrower or any Guarantor of this promissory note shall liquidate, merge, dissolve, terminate its existence, suspend business operations, die (if an individual), have a receiver appointed for all or any part of its property, make an assignment for the benefit of its creditors, or file or have filed against it any petition under any existing or future bankruptcy or insolvency law; (5) any change that occurs in the condition or affairs (financial or otherwise) of the Borrower or any Guarantor of this promissory note which, in the opinion of the Lender, impairs the Lender's security or increases its risk with respect to this promissory note; [illegible] event of default shall occur under any agreement intended to secure the repayment of this promissory note. Unless prohibited by law, the Lender may, at its option, declare the entire unpaid balance of principal and interest immediately due and payable without notice or demand at any time after default, as such term is defined in this paragraph.

WAIVER — Demand, presentment, protest and notice of nonpayment and dishonor of this promissory note are hereby waived.

Corporate Borrower

______

By X ______

Its ______

Individual Borrower(s)

X ______
Borrower

X ______
Borrower

EXHIBIT 3

© BANKERS SYSTEMS, INC., 1980, ST. CLOUD. FORM VAUN 3/80 [illegible] signed (if more than one, jointly and severally) [illegible] hereby [illegible] unconditionally guarantees the prompt payment of the [illegible] within [illegible] note (and all extensions and renewals thereof) and [illegible] sums stated or agreed to be payable thereon [illegible] due [illegible] maturity, by acceleration or otherwise, and hereby consents that [illegible] time to time, without notice to the undersigned, said [illegible] note may be extended or renewed in [illegible] or in [illegible] for any period (whether or not longer than the original [illegible] part of such promissory notes; additional credit be given from this [illegible] section may be extended to original Borrower in the [illegible] and the holder of said note may at any time surrender, release, renew, extend, or exchange all or any part of the property [illegible] securing said note, or take any of the actions set forth in said note all without affecting the liability of the undersigned. The Lender may, at its option, at any time after an event of default by the Borrower, exercise its right of set-off of all or any portion of this note against any liability or indebtedness of the Lender to the Guarantor (except a liability or indebtedness in which Guarantor, as a fiduciary, has no beneficial interest), without any prior notice. The release of any party liable upon or in respect of said note shall not release any other such party. Each of the undersigned hereby waives presentment, demand of payment and notice of nonpayment and of protest and of all other notices and demands whatsoever.

GUARANTOR

GUARANTOR

DATE OF TRANSACTION	PRINCIPAL ADVANCE	BORROWER INITIALS (not required)	PRINCIPAL PAYMENTS	PRINCIPAL BALANCE	INTEREST RATE	INTEREST PAYMENTS	INTEREST PAID THROUGH
/ /	$		$	$	%	$	/ /
/ /	$		$	$	%	$	/ /
/ /	$		$	$	%	$	/ /
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SARGENT COUNTY BANK
Forman North Dakota 58032

December 17th, 1984

Mr. Wynn Rasmussen
Farm Home Administration
Forman, ND 58032

Dear Mr. Rasmussen:

John Wentworth brought in a check for 43,801.50 from the sale of 177 calves. 31 steers went for 73.25/cwt, 62 steers went for 73.00/cwt, 60 heifers went for 62.00cwt and 24 heifers went for 63.75/cwt. All of the proceeds were placed against the note as follows: 30,278.87 was credited towards interest and pays this up until December 17th, 1984. $13,522.63 was credited on principle. In June of 1984 he sold a 6-row IHC corn planter for $3,300.00 and this amount had been put on principle at that time. The balance remaining on our notes is $208,177.37. He was supposed to make a payment to us of $52,476.38 but calf check was not that big. For your information our operating loan has been paid down to $3,000.00. He has this much corn left but will be feeding it the 8 calves that he has left and also to some cull cows and bulls. We will have to get you to release this when he sells this as the corn should go on our operating note.

If there is any problem with the Guarantee from you people because the full payment was not met, please let us know. If we hear nothing we will consider it okay until he sells calves again in 1986.

We are planning to make our annual reviews and do the rest of our paper work around the first of March.

Sincerely,

D. Dean Rockswold
Vice President

Gwinner, North Dakota 58040

Rutland, North Dakota 58067

EXHIBIT 6

12 31 84

40 041 0464487833 | 50 | EE | WENTWORTH, JOHN E

14.0000 | 06/30/84 | 05/23/84 | $225,000.00

JUNE 30 & DEC. 31

205,677.37

UNPAID INTEREST ACCRUED
5,710.36

11. AMOUNT OF PRINCIPAL ADVANCED DURING CURRENT REPORTING PERIOD (4437)
$ 10.0

1,40000 14.000

1 = TERMINATE
2 = DO NOT TERMINATE
2

COMPLETE ONLY BY THE LENDER FOR REPORTS AS OF DEC. 31

AMOUNT AHEAD OR BEHIND SCHEDULE
1 28,202.3 Behind

Sargent County Bank-Forman, ND 58032

Vice President

Vice President

February 27th, 1985

SARGENT COUNTY BANK
FORMAN ND
58032

FINANCE OFFICE

1980-41
(4-79)

EXHIBIT 13

Form FHA 440-21
(Rev. 1-5-71)

Position 1

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

APPRAISAL OF CHATTEL PROPERTY

Name John E. Wentworth

ITEM OR CLASS OF LIVESTOCK

Item No.	Quantity	Kind—sex	Breed	Color	Weight or average weight	Age or age Range	Brands or other identification	$ Value
1.	150	Cows	Hereford	Red-white	Ave 1100	4-6	NL	90,000
2.	30	Cows	Cross Angus-Hereford	Black & Black- White-face	1050	6-8	NL	15,000
3.	20	Cows	✓	—	1000	6-8	NL	9,000
4.	3	Bulls	Angus	Black	1600	4	—	3,000
5.	3	Bulls	Hereford	Red-white	1600	4-5	—	3,000
6.								
7.								$120,000
8.								
9.								
10.								
11.								
12.								
13.								
14.								
15.								
16.								
17.								
18.								
19.								
20.								
21.								

DEPOSITION
EXHIBIT
13

EXHIBIT "E"

ITEMS OF FARM and OTHER EQUIPMENT

o.	Quantity	Kind	Manufacturer	Size and type	Condition	Year of manufacture	Serial or motor No.	$ Value
1.		See	Schedule					212,500
2.								
3.								
4.								

otal Value of Appraised Property		$332,500
tal of Secured and Unsecured Debts to be Paid with Loan Funds	$225,000	
her Debt(s) Secured by Lien(s) on the Appraised Property	$ 41,600	
tal Debt (B plus C)		$266,600
maining Equity in the Property (A minus D)		$ 65,900

3-6-84

[illegible]

Signature

V.P.

Title

☆U.S.GPO:1978-0-665-011/1807

MACHINERY & EQUIPMENT

NO	ARTICLE	YEAR	MAKE	VALUE 4-12-83	VALUE 1-2-84	
	Baler	1978	Vermeer Round Baler	5000	4100	
	Combine	1976	IHC 815 Diesel [illegible]	4000	2200	✓
	Bale Mover	1978	Farmhand - Large	1800	1700	
	Corn Cultivator	1974	IHC 6-Row 30"	800	750	
	Corn Planter	1979	IHC 6-Row 30" 400	3500	3200	
	Cultivator	1972	Lilliston 6-Row 30"	600	550	
½ Int	Lister	1972	JD 4-Row 38"	600	550	
½ Est	Disc	1976	IHC 12' offset HD	1000	900	
	Disc Tiller	1979	White 15' tandem	2500	2250	
	Ensilage Cutter					
	Field Cultivator	1975	IHC VS 152 w/ Drag	750	700	
	Field Cultivator					
	Feed Mill	1969	Gehl Mixer Mill	900	650	
	Farm Loader	1974	Farmhand 236 w/ grapple & Bkt	2200	2100	
	~~Loader~~ Farm Loader	1981	Farmhand 736 w/ grapple-Bkt	2300	2100	✓
	Auger	1973	41' PTO	400	350	✓
	(2)	1979	55' 8" & 60' x 8" ~~[illegible]~~	2500	2250	
	Grain Drill	1970	JD 14' DDL w/ Fert & grass	1000	out	
	Grain Drill (2)	1983	IHC 6200 18' w/ Fert & grass		18000	
	Grain Elevator					
	Hay Mower	1974	IHC 1100 9'	500	550	
		1979	IHC 1100 9'	1050	1000	
	Hay Rake	1972	Rosse 36' Hyd Dump Rake	800	700	
	✓	1971	IHC #16 S/D	400	350	
	Harrow					
	Harrow, Disc					
	Milking Equipment					
½ Est	Manure Spreader	1973	Balzer 410 Bu	800	750	
	Plow	1972	IHC 710 5/16 FB	1000	900	
	Plow	1972	Melroe R&R 5/16	700	600	✓
	Plow					
½ Est		1976	Farmhand 900 tub grinder	2500	2000	✓
	~~[illegible]~~ Stock Trailer	1965	12'	800	750	✓
	(2) Steel Bins	1978	4200 Bu	3000	3000	
	Sprayer					
	Service Tank			100	100	
	~~[illegible]~~		H.L. Bros 300 Bu gravity Box	1000	1000	
	4 Gas Barrels		500 gal 1000 gal ~~[illegible]~~ 300 gal 550 gal	1500	1500	
	Round Bale Feeders		(7)	500	500	
	Trailer		Case Wagon w/ 3 Steel Hay Racks	1200	1100	
			Running gear			
	Unloading Wagon	1969	Schwartz 180 Bu Bulk wagon	750	700	
	Tractor	1972	IHC 766 D w/ Cab	6500	5000	
	Tractor	1974	IHC 966 D w/ Air Cab 3pt	8000	out	
	Tractor	1979	IHC 986 D w/ Cab Duals weights	12500	16700	
	Tractor		IHC H	500	700	
	Tractor	1981	IHC 986 D w/ Cab Duals weights	16000	19000	✓
		1982	IHC 5088 D 2wh w/ Cab Duals air		32000	
	Auto	1979	Ford 2-door Landau LTD	3200	4000	
		1977	Chev Camaro w/ Air LT	3400	3000	✓
	Truck	1979	IHC 2-ton truck w/ Box & Hoist	14000	16000	✓
	Truck	1978	Ford F-150 4x4 4-Speed	3800	4200	
	Truck	1976	GMC 2-ton w/ 15' Box & Hoist	7000	7000	
		1982	Chev 3/4-ton Diesel 4x4 6.2 ltr	8500	8400	
		1958	GMC ½-ton	500	400	
	Misc. Equipment		tools, Supplies	20,000	20000	
½ Int	(1) Corn Crib & Wooden Bin			600	600	
	24 Feed Bunk			500	500	
	Dozer Blade	1973		800	800	
	TOTAL VALUE			173,150	212,500	

BANKERS SYSTEMS INC., ST. CLOUD, MINN. Form FS-1

SIGNATURE

P.O. Box 1737
Bismarck, ND 58502

JAN 19 1988

January 15, 1988

Mr. James J. Coles
P.O. Box 2071
Bismarck, ND 58502-2071

Dear Mr. Coles:

We have received your letter of January 12, 1988, pertaining to John Wentworth who presently has a loan with the Sargent County Bank which is guaranteed by FmHA. While we are aware that recent farm legislation has been passed which will effect FmHA programs, we have not yet received regulations outlining FmHA authorities.

We are therefore unable to provide any information on how that legislation might relate to Mr. Wentworth's present financial position.

Please contact Farmer Program Specialist Robert Zimmerman at 255-4011, Ext. 661, if you have questions.

Sincerely,

JOHN E. BERGAN
Acting Chief, Farmer Programs

cc: DD IV
CS 40-41

April 26, 1989

Dear Senator Conrad: As followup to my son Wilbur Wilkinson's testimony at the congressional hearing held in Bismarck, North Dakota, at the Heritage Center, please find attached the following documents supporting his testimony on my behalf:

My letter dated April 8, 1989, to Mr. Hakanson and his response dated April 18, 1989. Please note that Mr. Hakanson's response leads me to believe that not only does he not understand the DALRS program he also does not understand the Agricultural Credit Act nor the laws purpose or intent.

I am also attaching a folder which includes a cover letter with 25 attachments supporting the statements contained in the cover letter dated April 17, 1989. Please read this document in its entirety as it details our involvement with FmHA from 1972 to the present and the facts show that Mr. Hakanson, FmHA, has acted in extremely bad faith bordering on criminal actions in his dealings with me and my operation. Senator Conrad I need your assistance in this matter. Please help. I am also requesting that these documents be made part of your hearing if possible.

Ernest Wilkinson.

[Attachments mentioned in the letter of Ernest Wilkinson are retained in the subcommittee file.]

April 24, 1989.

The Honorable Kent Conrad,
U.S. Senate, Washington, DC.

Dear Senator Conrad: I am writing this because of several concerns I have with the Farm Credit Act, FmHA, and Farm Programs.

My first concern is whether or not I will continue to be in business. Until everything is finalized I won't know. Trying to get information has been difficult at best. I have asked for a copy of the Farm Credit Act, but have received nothing. Trying to make decisions when information isn't easily obtained is hard.

This leads to my second concern. I really wonder if FmHA policy in handling loans will change. By this I mean that they try to mislead and/or discourage young farmers who have come to them for help. They are supposed to assist you in finding the best option after checking out all your alternatives.

Many people have been guilty, as I have, of assuming that they are giving us correct information. This has not been the case. If I want to know anything, I don't ask them. They either give you wrong or incomplete information, or they try to delay things so you will give up.

I have had loan delays, paperwork delays, money approved and not released (operating and living), and general misinformation as to what was needed. You only get the bare minimum of information. Shouldn't we have all information available to us?

I was trying to get a loan to buy some feeder lambs in addition to my operating loan. I started by asking what was needed to add this enterprise to my operation. FmHA said to put my crop in and meet with the committee later in the summer, which I did. I met with the committee after talking with a bank that would finance me. The County Committee approved this endeavor. When I received my notice, it was after harvest. I went to the FmHA office to find out what would happen next. I was then told that I didn't have a signed application on file and that I would have to wait for the committee to meet again. I was stalled from the beginning.

I've been told by a County Supervisor in another State that using this tactic is a common way to discourage people. It makes you wonder exactly what these Supervisors are being told. Why should a person be subjected to delays? If you aren't approved, that's one thing, but being approved and stalled is quite another.

FmHA is a lender of last resort set up to assist us. Rather than blaming and pointing fingers, can't we get back to what they are really supposed to do? During the activities of the last 6 months, it doesn't seem to have changed. If we want information on a timely basis, we can't get it from them. The history of delayed tactics and misinformation make this impossible.

As far as the Farm Program goes, we have to consider why people want certain things. Some farmers have most of their things paid for. Others have it all financed and are basically still starting out. We have to understand why a person takes a particular position. Some want more land, so they would just as soon see me, as well as others, out of business. Just because a young man and his family lives on

$13,000-$14,000, pays $15,000-$20,000 in interest and falls behind on his payments doesn't make him a bad farmer. I have seen bad farmers that only make money because they have so much land that they don't need to make but a dollar an acre to live like we have to.

Don't let greed and name calling set our farm policy. There are a lot of young people who are honest and hardworking. All they want is to make a living. They don't need to be, or even want to be, rich. If they can raise their children in a rural community and pay for their land in their lifetime, they will be happy.

These aren't people who by-pass local businesses to get volume discounts. We have to establish our priorities and move in that direction.

Farming is a business, that's true. But big shouldn't always be better. It works that way with industry, government, and farming. The big ones make money, the small ones don't, and the economy goes to pieces. I am willing to go into detail on any of these things that have happened with anyone who will listen.

Sincerely,

GREGORY C. HANSEN.

RONALD L. SWINDLER,
Mott, ND, May 2, 1989.

SUZY DITTRICH,
The Senate Agriculture Committee, U.S. Senate, Washington, DC.

DEAR SENATOR CONRAD: I would like to thank you and the Senate Agriculture Committee for holding a Senate Agriculture Committee Hearing on the implementation of the Agricultural Credit Act of 1987 on April 26, 1989, in Bismarck, ND.

As we were unable to attend the hearing personally, we, as farmers in southwestern North Dakota, would like this letter to be entered as our testimony.

This letter will describe only some of the problems we have encountered in trying to work with Farm Credit Service. This will only be the "tip of the iceberg." Many problems and details are not mentioned, due to the length it would demand. A synopsis follows:

Farm Credit Service's intentions have been anything but to cooperate with us. FCS would rather have us go into bankruptcy than negotiate. In fact, we documented that a FCS loan officer said just that. We understand this individual is no longer employed by FCS, but the same attitude persists today.

Our restructuring experience began in 1986 when we realized that we could not survive with a debt that had gradually increased from reamortization of unpaid operating capital due to hail, low prices, and drought. At that point our local bank was very supportive and suggested that we approach FCS with an offer to buy out for cash, their mortgage at an amount less than the debt. We wanted to pay our debt in full but realized that the loan would no longer cash-flow on a per acre basis.

Our response from FCS was that we would have to be in default on our loans before they would even consider a buyout. Upon the advice of counsel and the other lenders we allowed the loan to become delinquent, not realizing that the result would be (a) transfer of loan servicing to the Special Credit Department, and (b) high risk interest rate and a lower credit rating.

In compliance with the Farm Credit Act of 1987, we presented two well developed plans. It included a deedback of numerous acres and we asked for lower interest rates along with our principals. The answer was NO.

We filed bankruptcy (December 1988). Our other creditors settled before bankruptcy. FCS did not settle. FCS did give us a cashout price, though. In our amazement, we asked, "why didn't you give us this price 2 years ago?" The answer was, "That is The System."

FCS came with an inside agreement. Which included some deedback, only if we stay in bankruptcy, though. We also lose the right of first refusal.

As you see from our experience. FCS seems to be trying to back farmers into the corner. Several lawyers from various States have stated there is only two ways to change the attitude of FCS. One is through legislation, the other is by the courts. Farmers do not have the time, the money, or the stamina to fight the system by themselves. (The sad thing is that the FCS knows that.) So most farmers succumb to the pressures and deed back land. FCS calls this a workout, we call it systematic liquidation of Rural America.

Senator Conrad, you have sparked a flame of hope that even drudging up these old hurts may help to change "the system." Our prayers are with you and the Senate Agriculture Committee in searching out the inequities between the farmers and the FCS. God bless you.

Sincerely,

RONALD L. AND JANICE A. SWINDLER.

OVERSIGHT ON THE IMPLEMENTATION OF THE AGRICULTURAL CREDIT ACT OF 1987

With Respect to Farmers Home Administration Borrowers

TUESDAY, MAY 9, 1989

U.S. SENATE,
SUBCOMMITTEE ON AGRICULTURAL CREDIT OF THE
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:34 a.m., in room SR-328A, Russell Senate Office Building, Hon. Kent Conrad (chairman of the subcommittee) presiding.

Present or submitting a statement: Senators Conrad, Daschle, and Kerrey.

STATEMENT OF HON. KENT CONRAD, A U.S. SENATOR FROM NORTH DAKOTA

Senator CONRAD. This hearing before the Senate Subcommittee on Agricultural Credit will come to order.

Good morning. I would like to welcome all of you to this subcommittee hearing to review the implementation of the Agricultural Credit Act of 1987 by the Farmers Home Administration.

As many of you know, the purpose of this act was to establish a reasonable, fair process for FmHA to use in servicing delinquent loans, at a time when FmHA had nearly $7.6 billion in loans in a nonaccrual status. The major cause of the nonaccrual loans was the farm recession of the 1980's which lowered net farm income, in real dollars, to the lowest level since recordkeeping began in 1910. In addition, FmHA's failure to enforce its own rules and regulations, including its authority to write-down debt, resulted in numerous lawsuits—tying FmHA up in court and delaying an orderly resolution of nonaccrual loans.

The act establishes an orderly process to resolve FmHA's problems. It requires FmHA to restructure delinquent borrowers when the cost of restructuring is less than the cost of foreclosure to the Government.

We are here today to discuss the successes and the problems arising from the implementation of this act for farm borrowers and FmHA.

The implementation of this act is surely a very difficult and complex task, and I do want to commend FmHA for the effort it has made thus far to do so. The employees of the agency have put in an enormous amount of time, and, in large part, the results has followed the intent of the act. I think that Mr. [Neal Sox] Johnson, and his immediate predecessor, are to be commended for the significant strides FmHA has made since passage of the act. However, to be fair, it is clear that more work needs to be done.

Less than 2 weeks ago, I held a subcommittee hearing on this issue in Bismarck, North Dakota. The excellent testimony I received at that hearing was helpful in clarifying the problems with the restructuring process authorized by the act.

It appears to me that many of the problems which were raised at that hearing, and many of the issues that will be discussed today, can be resolved by increased communication and consistency throughout the Nation among FmHA offices, and between FmHA and its borrowers. State, district, and county FmHA offices need clarification on many aspects of the restructuring process.

For example, there is great concern in my State about the County Supervisors' authority to change the figures contained in borrowers' Farm and Home Plans, oftentimes without the knowledge or consent of the borrowers. If borrowers discover that errors were made in the Plan after the DALR$ program has run, many have found County Supervisors unwilling to correct them, and unwilling to negotiate possible changes in the Plan, including changes in the borrower's farming operation. Yet these simple changes, made early in the restructuring process, could result in a workable restructuring plan.

Further, I am concerned, in general, about the DALR$ program. So much is at stake for farmers, and yet so little is known about the basic economic assumptions and calculations used in the program. Another issue which concerns me in my State is FmHA's unwillingness to negotiate FmHA debt during the mediation process. We heard a good deal of testimony on that question in the hearing in North Dakota. I am also concerned, and surprised, by the large number of net recovery buyouts that FmHA has offered compared to the number of borrowers that have received restructuring offers. It is issues like these that lead me to question FmHA's implementation of the legislation. When FmHA is not willing to be flexible or open during the restructuring and mediation process, the result is wasted time and money.

I believe that the most important message that FmHA should communicate to borrowers in order to eliminate these concerns is openness and flexibility. FmHA employees must be willing to discuss all aspects of the restructuring process, the borrowers' rights, and options under the act, and other FmHA programs. County Supervisors need to include borrowers to a greater degree in the development of a feasible Farm and Home Plan.

The restructuring process needs to be personalized. It cannot depend solely on the results of a computer analysis. Its accuracy depends on a solid knowledge of a borrower's individual operation, and open discussion between the FmHA and the borrower. It also requires, in my judgment, some flexible thinking by both parties about the borrower's current operation, and changes that could be made to make the operation more efficient, and debt restructuring possible.

I am encouraged by the fact that openness and flexibility have been the practice in many FmHA county offices, and the restructuring process in many of those offices has been successful. That tells me that communication is the key to resolving these problems.

It is my hope that FmHA will accept the testimony presented today as assistance in identifying problem areas, rather than as criticism which the agency must defend against.

It is very important that these problems be resolved. I think that I speak for all members of the committee when I say that we are ready to do everything that we can to ensure that these problems are addressed and cleared up.

During the North Dakota field hearing, we were able to have very productive dialog among the witnesses, including the State Director of FmHA, Mr. Ralph Leet. I feel that through this dialog, everyone had the opportunity to express their concerns and respond to the comments of other witnesses.

It is my hope that this hearing will proceed in the same manner. I understand that the FmHA Acting Administrator, Neal Sox Johnson, may not be able to stay for the entire hearing. I encourage him to stay as long as he can to respond to the concerns raised by other witnesses.

I want to thank the witnesses for being here today. Let us proceed with our first witness.

Mr. Johnson, welcome.

Mr. JOHNSON. Thank you. I would like to ask Jack Hertzler, our Assistant Administrator for Farmer Programs to join me.

Senator CONRAD. Let me indicate that we followed a simple rule at the hearing in North Dakota, and that is, everyone treats everyone with respect. There is no intention or design to put people in uncomfortable positions. We are interested in talking, openly and directly, about the problems that we have encountered, and, again, there is no desire to put the agency on the defensive, and there need be no feeling by the agency, that you are on the defensive.

As I indicated in my statement, in many areas, we find that you have done a commendable job in addressing what must have been an extremely difficult task, and we applaud the effort that has been made.

Obviously, there are some areas where we would like to see improvement, and I think we can do that, working together. Welcome.

We will insert the prepared statement of Senator Gorton at this point in the record.

[The prepared statement of Senator Slade Gorton follows:]

PREPARED OPENING STATEMENT OF HON. SLADE GORTON, A U.S. SENATOR FROM WASHINGTON

Mr. Chairman, I thank you for scheduling this hearing to provide the members of this subcommittee with the opportunity to hear from the Acting Administrator of the Farmers Home Administration on his agency's efforts to implement the Agricultural Credit Act of 1987. I also look forward to hearing from the panelists you have assembled and who no doubt have a number of worthwhile suggestions on ways to improve on those efforts.

Let me begin by complimenting Mr. Johnson and the fine work done to date by his agency in meeting the law's mandate in a manner that is both efficient, and in more cases than not, compassionate. In talking with Washington State's FmHA Director, Earl Tilly, I learned of the many long hours and extra effort his staff expended in processing the more than 360 requests by our farmers for special debt-relief consideration. Nationwide, I realize the number of applications needing to be processed within the 60-day time period exceeded 23,000, and I wish to compliment Mr. Johnson and his team on their efforts.

Nevertheless, I have a number of questions intended to clarify the fact that this administration, through the implementation of the Agricultural Credit Act of 1987, will do everything possible to assist farmers coping with financial difficulties encountered through no fault of their own, and help keep them on the farm.

Thank you, Mr. Chairman.

STATEMENT OF NEAL SOX JOHNSON, ACTING ADMINISTRATOR, FARMERS HOME ADMINISTRATION, U.S. DEPARTMENT OF AGRICULTURE, WASHINGTON, DC, ACCOMPANIED BY GLENN J. HERTZLER, JR., ASSISTANT ADMINISTRATOR FOR FARMER PROGRAMS

Mr. JOHNSON. Real good. If I might read my opening statement here, I think I will get some numbers and things before you, and certainly the audience here, that might be of interest and lead to some additional questions.

I do thank you, sincerely, Mr. Chairman, members of the committee. I do appreciate this opportunity to be with you today to report on the progress we are making in restructuring loans under the terms of the Agricultural Credit Act of 1987.

MAKING REAL PROGRESS IN GIVING MANY OF OUR BORROWERS A NEW START

I can report to you that we are, indeed, making real progress in giving many of our borrowers a new start, with new hope and confidence. At the same time, our Farmers Home Administration employees have been working many extra hours—as you pointed out—to also provide regular service to our borrowers who were not in need of special assistance.

COUNTY OFFICES MAILED NOTICES OF LOAN SERVICING AVAILABILITY LAST NOVEMBER

In implementing the Ag Credit Act, our county offices mailed notices of loan servicing availability last November to 66,426 borrowers who were more than 180 days delinquent on their payments, many of them for several years. They represented about 28 percent of our 240,000 farm borrowers that Farmers Home works with.

We received responses from 35,146 borrowers. Of those 31,280 who did not respond to the notices, we must assume that they are no longer actively farming or interested in trying to farm with Farmers Home assistance. Still, most of them will be offered preservation servicing of homestead protection and leaseback/buyback privileges.

31,817 SUBMITTED COMPLETED APPLICATIONS BY THE STATUTORY DEADLINE OR THE "RULE OF REASON" EXTENSION

Of those who responded, 31,817 submitted completed applications by the statutory deadline or the "rule of reason" extension. Actually, I believe we had something like over 60 percent of them came under our rule of reason. To help explain what has happened to those 35,146, we have divided them into three categories: those restructured, those requesting buyout, and "others."

RESTRUCTURING PROCESS

In the restructuring process itself, we find that as of April 24, 12,562 borrowers had qualified for some form of assistance: 5,492 had qualified for consolidation, lower interest rates, rescheduling and so on, which allows them to continue farming from a sound cash-flow position; 3,166 had qualified for loan write-downs totaling $511,640,039; and 3,904 requests were still pending. This includes those cases in the appeal process, mediation, or have taken bankruptcy status since asking for the service.

BUYOUTS AT NET RECOVERY VALUE

Buyouts at net recovery value have been approved for 2,057 borrowers for writeoffs totaling $408,269,195. We got pretty accurate there, didn't we? And 12,792 borrowers were eligible for buyout, but had not yet let us know if they intended to pursue that option, which they actually had 45 days to give us an indication.

Borrowers who do not qualify for debt restructuring are eligible to buyout their loan at net recovery value, which is current market value of collateral less prior liens and costs of maintaining and managing or selling it.

A total of 7,735 applications are in another category which includes those that are incomplete, loans paid current, and those paid in full. It is interesting to note, Mr. Chairman, that 3,613 borrowers made payments bringing their loans up to date, and another 793 paid theirs up completely. In getting off the delinquency list, those borrowers made payments amounting to more than $50 million.

More than 2,800 borrowers with long overdue loans asked us to consider debt settlements.

STATES WITH THE LARGEST AMOUNTS OF LOAN WRITE-DOWNS

The States with the largest amounts of loan write-downs were Oklahoma, with $46.1 million; Michigan, $38.9 million; Louisiana, $35.4 million; Mississippi, $31.3 million; and Minnesota, $28.1 million. I have also added to my list North Dakota, $27.1 million. So those were our major ones to do write-downs.

STATES REPORTING MOST BUYOUTS AT NET RECOVERY VALUE

The States reporting most buyouts at net recovery value for borrowers not eligible for loan servicing were Michigan, $78.6 million; Louisiana, $67.1 million; Indiana, $21.5 million; Minnesota, $18.4 million; and Kentucky, $17.7 million.

COMBINING WRITE-DOWNS AND BUYOUTS

In combining write-downs and buyouts, the States reporting the largest dollar amounts were Michigan, with $117.5 million; Louisiana, $102.5 million; Oklahoma, $62.9 million; Mississippi, $47.8 million; and Minnesota, $46.5 million.

AVERAGE LOAN WRITE-DOWN AND BUYOUT

The average loan write-down was $161,605 and the average buyout was $198,478.

In the write-down category, you will note that 37 borrowers received write-downs of more than $1 million each. Eight of those were in Mississippi; five were in Oklahoma; four were in Louisiana; three each were in Georgia, Montana, and North Carolina.

Also in that category, 168 borrowers received write-downs of between $500,000 and $1 million. Seventeen were in Louisiana, 16 were in Mississippi, 15 were in Michigan and Oklahoma each, and 10 each in Montana and North Dakota.

Thirty-one borrowers bought out loans of more than $1 million each. Leaders in this category were Louisiana with seven, Michigan with five, and Indiana with three.

Also, 137 borrowers bought out loans from $500,000 to $1 million. Thirty-seven were in Michigan, 19 were in Louisiana, 11 were in Indiana, and 10 were in Kentucky.

SUMMARY

In summary: 53 percent of the borrowers to whom notices were addressed responded with a request for assistance; 87 percent of those requesting assistance completed their applications within either the initial 45-day time period required by law, or the "rule of reason" time extension granted to borrowers who made good faith efforts to comply. Ninety-six percent of those who completed applications received an offer from FmHA to either restructure or apply for net recovery buyout.

Thirty percent of those who completed applications have been approved for restructuring, with 11 percent qualifying for restructuring with debt write-down; 7.2 percent of those who completed applications have been approved for net recovery buyout; another 45 percent are eligible to apply for buyout, but they have not yet notified us of their decision. 15.5 percent paid their accounts either current or in full, removing them from the delinquency list; 20 percent requested mediation; 10 percent requested debt settlement.

Nearly $1 billion have been approved in write-downs and buyouts, all to the borrowers' advantage.

We have been working, long and hard, nights and weekends, to meet the mandates of the act. The results reflect this, and we will continue our efforts to the best of our ability. We would not have been able to make this much progress without the dedicated efforts of the thousands of Farmers Home employees who have given up much of their free time—and weekends, I might add—to help their neighbors. They literally have served beyond the call of duty.

Mr. Chairman, there are a number of statistics pertaining to individual States and loan dollar amounts that may be of interest to you, so I will submit them for the record.[1]

This completes my formal statement, and I am happy to be here with you and will be happy to accept any questions you might have. Thank you.

[The prepared material of Neal Sox Johnson, Farmers Home Administration, appears at the conclusion of the hearing.]

Senator CONRAD. Thank you for being here, and thank you for that statement. My colleague, Senator Kerrey, has joined us, and at this time, if he has an opening statement we would be glad to take that. If not, we will go into the questioning.

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[1] See page 427 for the referred to material.

Senator KERREY. I have no statement.

Senator CONRAD. All right. Mr. Johnson, if I might, on the 66,000 borrowers that were sent notices, you indicate that you received responses from 35,000. That leaves some 31,000 that did not respond to the notices, and the assumption you have made is that they are no longer actively farming.

After the deadline for responding, have you in fact heard from some of those 31,000, and, if so, how many? What other indications might you have as to what has happened to those 31,000? Did you get notices back in the mail that these people had moved, and had no forwarding address? What indications do we have about the 31,000 that did not respond?

Mr. JOHNSON. The 31,000, as I indicated in an earlier hearing here, many of those fell into three classifications of farmers. They were what we call our "collection only" accounts. There was 8,560 of those.

Senator CONRAD. What does that mean?

Mr. JOHNSON. That means that all assets have been disposed of, so we have been working with them. We have not yet written off their debt, but there are no assets, so essentially, they are not farming at this time. Everything has been disposed of, so it is a matter of cleaning up——

Senator CONRAD. All right. So we pretty much know that they are out of farming.

Mr. JOHNSON. Essentially out of farming.

Senator CONRAD. The assets are gone. Right?

Mr. JOHNSON. That is correct, sir. Then we have a group of 8,741 whose cases we had previously accelerated their accounts. So we were not required by the law as the 1987 act was not retroactive. Therefore, those that had been formally accelerated in some years past were not resubmitted.

Senator CONRAD. And what has been the disposition of those cases?

Mr. JOHNSON. I am not sure I can tie it down. Jack, do we have any numbers that you are aware of, to tie that down? Most of those——

[Pause.]

Mr. JOHNSON. OK. Well, Jack was just relating to me, and I may have misspoken there. We did send those people notices. 8,741, the number I gave there, is the ones that we have sent the notices to. 4,664 of those had responded. This was as of February 28——

Senator CONRAD. So they did have the right to go through the process and——

Mr. JOHNSON. That is right. They had the right to go through the process.

Senator CONRAD. And you got responses from some 4,000 of those?

Mr. JOHNSON. That is correct. And then, let's see. In bankruptcy notices, which there is quite a few more in that group—there were 7,847 of them in bankruptcy. Of those, roughly 1,000 of them responded. So there you see quite a few in those categories, that did not respond. I will remind you that——

Senator CONRAD. That is almost 25,000 of them.

Mr. JOHNSON. Pardon?

Senator CONRAD. That is almost 25,000 in those three categories of the 31,000. So we have 6,000 that are in some "gray area."

Mr. JOHNSON. Or we may have heard from them some time later now. So I am not sure. In the process, it is quite likely that somebody did contact us. But we still feel that most of them that were really serious about looking into their opportunities with the Farmers Home assistance under the Ag Credit Act, they did make contact, or we made contact with them, if we could track them down, and they did have an opportunity to respond.

Senator CONRAD. All right.

Mr. JOHNSON. And we did try to obviously apply our "rule of reason" in accepting a complete application. We were very, I think, generous in what we considered to be essentially enough information to accept it as good faith.

Senator CONRAD. All right. Now, let's turn our attention to the some 35,000 that did respond, because I want to make sure that we understand, accurately, what has happened with those borrowers.

Mr. JOHNSON. Right.

Senator CONRAD. As I read your testimony, about 12,500 of the 35,000 have qualified for some form of assistance?

Mr. JOHNSON. That is correct.

Senator CONRAD. What has happened to the other 23,000? As I read these numbers, the numbers that you have provided are a breakdown of the 12,500 that have qualified for some form of assistance. What has happened to the 23,000?

Mr. JOHNSON. Well, in the restructure category these numbers here should help. These, right here. Of those that qualified for restructure, we actually restructured 5,492. We did write-downs on 3,166 of those, and we have pending 3,904, and those are the ones I indicated pending. Essentially all of these people have been given their options, and so they are——

Senator CONRAD. Are these all part of the 12,500 that qualified for assistance?

Mr. JOHNSON. That is correct. Those three numbers should add up to——

Senator CONRAD. Yes. My question really goes to the others, the ones who have not qualified for assistance, which I read to be some 23,000. Can you tell us——

Mr. JOHNSON. Well, we have another group here. That is the restructured, the 12,000. Then we have those net recovery buyout options. OK? Of those——

Senator CONRAD. I am just trying to understand the categories. Those are not considered as being qualified for some form of assistance?

Mr. JOHNSON. That is correct. They did not qualify for either restructuring or write-down. Either did not qualify or did not choose to go that route.

Senator CONRAD. All right.

Mr. JOHNSON. OK?

Senator CONRAD. They didn't qualify for write-down or restructuring.

Mr. JOHNSON. Restructuring with some of the servicing options.

Senator CONRAD. And how many do we have over in that category that qualified for buyout?

Mr. JOHNSON. We have 2,057 that we have actually done the write-down on—OK?—and we have another 12,792 that are pending, and those are the ones that probably, in most instances, have not gotten back in touch with us to advise us. Can you think of any other category? Yes, mediation or appeal. Obviously many of those pendings chose to take bankruptcy. It was surprising, how many took bankruptcy afterward. I gave you that number.

Senator CONRAD. All right. If I might, let me turn to some questions that I have. My understanding of congressional intent is that the restructuring process should involve the borrower and FmHA in close discussion over the development of a feasible Farm and Home Plan.

I have heard—and it is troubling to me that I have heard this—that this is not always the case. Let me go one by one through the problems that I have heard, and ask for your responses to what should be happening, because any time you have an undertaking of this magnitude, obviously it is not easy to coordinate this operation.

I am told that County Supervisors have the authority to change many of the figures contained in the Plan submitted by the borrower without the borrower's approval. Is that true?

Mr. JOHNSON. They can do it technically without the borrower's approval, but they should be making the borrower aware of their reasons.

Senator CONRAD. So when we have cases that are brought to us, as we had in the hearing, where people were not informed, that is just a breakdown in communications? It is not a policy. That is simply where we just need better communication?

Mr. JOHNSON. And unfortunately, the time press that we were all under to get this job accomplished—both the borrowers and Farmers Home—to get this work accomplished, many times, in heavy-volume offices, there simply was not the degree—the time to accommodate that to the extent that any of us would like it. I think we would have to acknowledge that right off the top.

Senator CONRAD. Are borrowers provided with a copy of the actual Plan?

Mr. JOHNSON. Yes.

Senator CONRAD. So in cases where people assert that they were not provided with a copy, that, too, is not something that should occur?

Mr. JOHNSON. That is correct. Our regulations provide that they will, and I know, policywise, we have stated it—I have stated it——

Senator CONRAD. People should be able to get a copy?

Mr. JOHNSON. People should know.

Senator CONRAD. Let me go back to the question of the borrowers who have changes made in their Plans. What if the borrower does not agree to the changes? What if the County Supervisor said, look, it is not 40 bushels you are getting, we are going to give you an allocation of 28 bushels an acre, and the borrower feels very strongly that his proven yield is 40 bushels, and that is the number that ought to be used? What happens in a case like that? Is there an appeal?

Mr. JOHNSON. There can be an appeal. That can resolve it. That is the final thing. But what should happen is, first, certainly if Farmers Home, or the borrower, either one, just made a computation error in addition, or whatever, that should be corrected at any stage through the process, wherever somebody—you know—when an error is clear to everyone.

On those disputable-type items like that—and those usually come up over yields or price of commodities—we do give some guidance to, certainly, our people, and so if our people feel strongly, when it is reviewed, and if a conference is held, and needed, then the only resolution of that is through the appeal process, if they just come up with a honest disagreement.

Senator CONRAD. You just answered my next question which is, do FmHA representatives have the authority to correct errors? Your assertion is yes. We have had cases come to us where errors were made, and a County Supervisor told a farmer that that is it, there is nothing we can do. A mistake was made, and that is it. You are hung with it.

Clearly, that is irrational. So, I am pleased to hear your indication that that should not be the approach.

A serious problem that was discussed at the field hearing was the unwillingness of FmHA to negotiate FmHA debt during the mediation process.

I was somewhat surprised because I believe the mediation process is a time for all the creditors to be working on some solution to a problem, and to work together to develop a feasible plan.

I understand this issue has now been brought to your attention, and I hope today that you will tell me that you have resolved it. What decision have you made regarding this issue?

Mr. JOHNSON. Well, we hope we have resolved it. There are 15 States—I believe it is—that we have recognized mediation programs in, and which we have, you know, provided a grant of funds that were made available for that purpose to those States, to set up formal mediation processes.

Obviously some of those States vary a little bit in how they set it up. Coming from the hearing in North Dakota, obviously you would be more familiar with that, and as I understand it—and Jack and I were just discussing that this morning prior to coming up here, because I did ask him to look into that situation.

They have a two-tier system out there. One, as I am understanding it, is more of an informal, and it may or may not involve all the creditors. It is really more like what our conference with a borrower should be, which we give a borrower an opportunity for a conference. Then the other one is the more formal, the second level.

Certainly, we would hope that our people would be prepared to participate any time there was a need. If there is an error on something, again, they should correct it, wherever they are in the process. I do want to understand more——

Senator CONRAD. Let me just stop you there, because that is a very important message that we need to get out to everybody that is involved in the process. Again, I understand that you have a lot of folks who had to be brought up to speed on something very complex, very quickly, and so it is understandable that some people have misunderstandings.

But if there is an error, at any time in the process, that ought to be corrected.

Mr. JOHNSON. That is correct.

Senator CONRAD. There is no reason for us to get hung up on that kind of problem. All right.

Mr. JOHNSON. There is no reason, and obviously if they do, that means they are going to have to go back and run this DALR$ program, if you will, the computer programs that we have. Those would have to be run again if there was——

Senator CONRAD. I am very, very glad to hear you say that. I mean, that is another problem that we have encountered. My next question was, do FmHA representatives have the authority to correct the DALR$ program at any time in the process if they learn there is an error, and rerun the program, and your answer is?

Mr. JOHNSON. I do not know of any reason why they should not. Do you? No. OK.

Senator CONRAD. Do FmHA representatives rerun the DALR$ program with the new numbers that come through the mediation process? In other words, if they have gone through mediation, and come up with a new set of numbers that they have agreed to, is the policy that that be rerun through the DALR$ program?

Mr. JOHNSON. Yes. If there is anything that changes that program, it would have to be rerun.

Senator CONRAD. All right. I think that makes logical sense as well. Many borrowers have expressed concern that the appraisals used in calculating the net recovery value of loans are too high, or do not accurately reflect the capitalization value of the land.

This is a fairly consistent complaint that we heard, and I think probably understandable. Under the FmHA regulations issued on September 14, appraisals must take into account the capitalization value of the property.

How much weight does FmHA assign, by policy, to the capitalization value in its appraisals used to determine net recovery value?

Mr. JOHNSON. Let me ask Jack if he would respond. I may have something to add, but let me give him a shot, if you would there, first.

Mr. HERTZLER. Senator, in the appraisal process, capitalization is one of three parts of an appraisal, and we do not give any different weights over the two. We do say to the field, if the capitalization value is more than 5 percent different than what you have in a market comparison value, that you need to rethink your appraisal. There might be something that is not right in it.

Capitalization, in our appraisal system, is derived from determining the capitalization rate that is being achieved by farms, like farms in the area. We do not start out and say the cap rate ought to be six. It might turn out that it is only one in the area. So that is how we establish that cap rate.

Senator CONRAD. I hate to say, there are a lot of cap rates in my State that would be in the range of three.

Mr. HERTZLER. Somewhere in that range. And so there is not any weight give to that, one over the other. It is a guide, or it is a part of the evaluation process, and when we are all through with that we look at the three methods——

Senator **Conrad**. Are you finding that the capitalization values are tending to be lower than the appraisal values?

Mr. **Hertzler**. Well, it is part of an appraisal value. I cannot answer your question because without seeing a case, and knowing for sure, where that cap rate sets, as compared to market value—I am not aware of that kind of difference.

Senator **Conrad**. Maybe I could ask you this. I come from a background as a tax commissioner, and have been involved in a lot of property valuation. In the mix, when you are looking at the three methods of valuation, if you could just do some kind of "quick and dirty" survey and let us know which of those is yielding the lowest values, and maybe we could get a sense out there, if we are seeing some substantial difference. Because I must say to you, this is something I heard fairly frequently.

[The information of Mr. Hertzler can be found on page 470.]

Mr. **Johnson**. If I might add, Mr. Chairman, the market value, or comparables approach to appraisal probably, when we had them inflated so, they would have been much higher than a cap rate would have shown, obviously.

Senator **Conrad**. Yes.

Mr. **Johnson**. It depends on how much that land has depressed over the last few years, which we know it has in many areas, and it should be getting closer. However, I might add we are still concerned about the cap rate, and some of your colleagues in the House—I have had some meetings with some—who have indicated they may be proposing some technical amendments. We are concerned. We are finding ourselves, in some situations, with cap values where the land could be used for something more. We may be down to zero for agricultural purpose, but the land may be extremely valuable near some urban area or something.

Senator **Conrad**. Yes.

Mr. **Johnson**. And it is creating some——

Senator **Conrad**. I understand that problem.

Mr. **Johnson**. We will be happy to look at it, and respond to your question.

Senator **Conrad**. One other question that was asked to me, repeatedly, during this hearing was: Why do you use only the market value rather than the lower of the market value or the capitalization value when calculating net recovery value?

Is it the policy to use market value and not to use the lower of the two?

Mr. **Hertzler**. Well, our appraisal is in three parts: capitalization value, summation value, and market. And those three are used as measurements, one against the other, to determine that we are making a reasonable appraisal.

When we get all done, we have one market value, and like I said, if the capitalization value is 5 percent, plus or minus, from that figure, we think they need to rerun their appraisal. They did not use accurate comparables, or they did not do their capitalization calculation on really comparable properties, and there is something that is not quite in sync in their appraisal.

So, policywise, we do not consider capitalization value in the net market—or net recovery value appraisal process. We are required to offer property at capitalization value when it comes out of inventory back to leaseback/buyback rights, but in the net recovery value we are working to one value, which is market value.

Senator CONRAD. All right. Let me ask you this. When you are in this process, are you averaging the three? What are your people instructed to do to arrive at the net recovery value? What are their instructions?

Mr. HERTZLER. Well, the procedures—and I am not that familiar with them to be able to discuss, in detail, how that process works, but they do a capitalization value which, in our instructions, relate capitalization value to what net rents would be paid in an area based on the same kind of farms, and that gets us a capitalization value. We do a summation value which looks at the value of buildings, and all those kind of things that are a part of the property, and we do a market value comparison.

And those three should be very close. They should be within 5 percent of each other, when we are all said and done.

Senator CONRAD. But do you average the three? I mean, what do you do?

Mr. HERTZLER. I do not know. I cannot answer your question. I am not an appraiser and I am not that familiar with it, but we would be glad to get you that information.

Senator CONRAD. I would like to find out what the instructions are to your people.

[The information of Mr. Hertzler can be found on pages 471-532.]

Mr. JOHNSON. And that is one reason that we do provide the opportunity for a borrower to have their own appraisal done by some certified—you know—bona fide appraiser, to come up with another appraisal that——

Senator CONRAD. Well, you are very good at anticipating where I am going.

Mr. JOHNSON. OK.

Senator CONRAD. My next question is: Have you informed County Supervisors to consider the independent appraisal that is performed on behalf of the borrower?

Mr. JOHNSON. Yes. As fee contractors, we are hiring much of our appraisal work done. So we are hiring professional appraisers to do as much as we can. We obviously had to to accomplish this feat in time. But there are other approved appraisers. If a borrower is not satisfied with that appraisal, they can come with one that has the proper credentials that we would find acceptable, and come forth with another appraisal.

Senator CONRAD. Let me just say to you that we had testimony at the field hearing in which people said they had independent appraisers, and they brought in appraisals at significant variance, and the County Supervisors basically don't pay any attention to that.

Now obviously that is difficult for you to respond to without knowing the specific case, but it is not your policy to just dispense with an independent appraisal?

Mr. JOHNSON. It is not the policy to absolutely dispense with it, and obviously, if there is a difference in those appraisals that cannot be reconciled by agreement or discussion between the borrower and the Farmers Home official, then the appeal process would be the method by which we would have to resolve that difference.

Senator **Conrad**. All right. Let me ask a couple of more questions, and then we will go to my colleague. I have additional questions which, if we are not able to get to then, I will submit in writing for a response.

I have heard from many farmers that they are not given an adequate explanation of why their Farm and Home Plan was rejected by the DALR$ program. Now I understand the DALR$ program is fairly complex, but I have seen FmHA letters notifying the borrower of its decision on restructuring, which is supposed to provide an explanation, and the letters just do not.

It seems to me it is very important that borrowers get all of the information they need in order to make decisions.

Let me ask this: Are County Supervisors required to meet with borrowers, upon request, to discuss, in depth, why they were denied primary loan servicing?

Mr. **Johnson**. Yes. When we give them a letter, they can request it within 15 days, I believe it is.

Mr. **Hertzler**. It is part of the notification that begins, really, to resolve any disputed action. Of course it begins the appeal process, and the first thing that a borrower is able to do is ask for a meeting, and we are required, and we expect our people to participate in that.

Senator **Conrad**. Would you be willing to include in the letter explaining the denial of primary loan servicing, a simple sentence urging the borrower to meet with his County Supervisor, or at least advising him that he has that right?

Mr. **Hertzler**. Sure. We would have no problem with that. We would add that as just one sentence to the information we send out.

Senator **Conrad**. I think that would be helpful. You know, you would think that people would naturally assume that they should do that, but I must say, we had people come to us during this hearing and say they were not told that they could do that and so they did not do it.

Mr. **Johnson**. Well, it might be helpful. Certainly we will consider some appropriate wording to put in our adverse letters, because we do provide guide letters. This is something our County Supervisors are becoming much more acutely aware of—the importance of the language they use in that letter.

Because I know, back in 1986 and 1987, I personally conducted over 100 hearings myself, as I was looking into methods to improve, and I found in my cases about 30 percent of those cases, I sent the Farmers Home guy and the borrower back to get together for a conference, that I thought they should have held in the beginning.

Senator **Conrad**. Yes. I think we would clear up some problems, at least, and probably a pretty good number of them, through more communication as people go through this process.

As I understand the law, a borrower may appeal any adverse decision by FmHA. I am sure that is your understanding.

Mr. JOHNSON. Our regulations do provide for certain types of nonappealable-type items, but they are spelled out very clearly. But by and large, all adverse decisions are appealable.

Senator CONRAD. Let me ask you this. In my State, there is some confusion, frankly, about whether a borrower can appeal the first offer that FmHA makes in response to the borrower's application for primary loan servicing.

Can a borrower appeal the first restructuring offer that FmHA makes if the borrower believes an error was made in reaching that decision, or knows that the restructuring plan simply will not work for him?

Mr. HERTZLER. Regulations are probably not as clear as they need to be, to assure the borrower that they have that opportunity. The way it is written, and our response to it, in a case where a borrower did not respond to us at all, in other words, did not accept the offer to restructure, at that point, we send the next notice which then advises them that they have the right to meet and appeal.

We do not have any mechanism in between those. In the 45-day time period that the farmer has to respond to us, there is no mechanism in place at the present time that says "You know I don't agree with you. If you don't agree with me, come in and talk." We do not have that in place at the present time.

So the only way and the only time we presently notify a borrower that they could come in and discuss the restructuring with us is if they fail to respond to us at all.

Mr. JOHNSON. And they can get a complete package, or otherwise we would be appealing each that we could conceivably get ourselves caught in a situation that, I think, would be adverse to the farmer in many instances, as well as to the time it would take on Farmers Home, if you get to appealing each one of these actions individually, you know, do they qualify for—well, for any one of those servicing actions. The more that they try to do those things individually, then they can look at it in context, and we should list all of those things.

Senator CONRAD. Well, let me just say to you that coming from the experience of being a creditor, and I have been a creditor and I know exactly what you fear, my own experience has been that first exchange is a critical exchange.

If both sides sense that there is some responsible reasonable middle ground to get some chance of making progress, then there should be an opportunity for a meeting. I think there is some confusion out there about this that actually hurts the process. If the borrower believes that there was a mistake made or a misunderstanding in developing FmHA's restructuring offer they do not have a way of working through that difficulty. The system breaks down there.

So I would urge you to take a look at that.

Mr. JOHNSON. Communications obviously is the key to it.

Senator CONRAD. If a borrower wins an appeal based on errors made in data entered DALR$ program, for example, will the borrower be allowed to use the numbers he believes are correct for a new DALR$ run?

Mr. Johnson. Only if our County Supervisor thinks they are reasonable and acceptable.

Senator Conrad. Would he be able to say, look, would you just run one for me on this basis to see what happens?

Mr. Hertzler. I think common sense would say yes, you should do that, given normal circumstances and so forth.

Did you say in an appeal process or just walks in and——

Senator Conrad. No. One of the problems that we encountered frequently is people say, look, this DALR$ program is complicated. I got back a run, and frankly there are some numbers in there that I thought were just mistakes. If that would have been changed and run again, I think we would have gotten a different result.

And, as you know, in the DALR$ program, just a few numbers can make quite a difference in terms of the final outcome.

Mr. Johnson. But the key, in my opinion, to anything like that is to agree on the various parts. Do not try to look at the end results. We have a tendency a lot of times in all of our actions, whether we are conducting appeals or doing an appeal process or any of those, we want to get to the end results.

And somehow you have to break it down by those various parts and agree on those assumptions or those numbers there. Once you can agree on what the numbers are, then, you know, the end result, the mere running of the program, should kind of take care of itself.

But, I guess if you were just trying to appease someone to improve your communications with them, you might say, now, I do not agree with this, but I will go ahead and run you a copy of this, showing you. But, of course, the downside we would have to that is——

Senator Conrad. Let's get right to the bottom line of this problem, which is the complexity and inaccessibility of the DALR$ program.

This whole program was done on the UNIX system. As you know, we have a real hardware/software problem. There are very few computer systems used by the public which can run this program.

Part of the anxiety and part of the frustration that is out there is you cannot run the program with enough frequency that people feel comfortable with it and really understand what is going on. If your people are hard line about this, and say, "Nope, that's it. We ran it once and that's it." Then that increases the frustration and anxiety. That attitude puts people up against the wall in a way that is probably counterproductive.

Mr. Johnson. We obviously do not like that attitude about people being hard line. We think we are involved in supervised credit. We recognize that most of the farmers that we are doing business with are going to need a lot of assistance from us.

Now, obviously, there is a time to buy——

Senator Conrad. I understand that.

Mr. Johnson. And I think probably as much as anything our appeals process has helped to straighten a lot of this stuff out because now our people have to defend their decisions, and hopefully it is causing them to take a little bit more time and, you know, when they get frustrated enough, to back off.

Senator CONRAD. Senator Kerrey.

Senator KERREY. Thank you.

Mr. Johnson, I am going to make clear at the outset that I really share most of the objectives that I hear you describing. And I want to make sure that we separate those borrowers who have no intention of staying in farming from those who have the ability to get back on their feet.

I wish to observe, as well, that you are an executive branch agency and that while you operate with a considerable amount of influence from the legislative branch, you are influenced by the executive branch policies to a greater extent.

Is that a yes or no?

Mr. JOHNSON. I am not sure that is a good statement. Obviously it is not our intent to ever not fail to comply or to ever not comply with the laws that are set forth. So the laws are basically the things that give us our guidance.

Obviously we have some latitude in administration. I certainly want to be considered a part of my administration that I am representing. But I do not think we get that much interference, if that is the proper word, from the executive branch.

I think we basically comply with the laws, and then we have a regulation process that pretty well makes all of our actions and activity fall under the scrutiny of anybody that wants to comment.

Senator KERREY. So it is your intent then to carry out not only the letter but the intent of the law as defined by the legislative branch because, in this instance, the law was developed mostly in the legislative arena?

Mr. JOHNSON. I agree with that. I certainly see it is—obviously this is a hard pill for a lot of people to swallow. A lot of farmers out there are not real happy with this law. This was a hard decision.

I think much of this would have been written off in time anyway. What we basically did with that 1987 Ag Credit Act was to accelerate the process, and the debt is written off under the assumption that all of those debts would be written off and be lost to the maximum. Maybe we would not have had that if we had worked through them, but the time that is the balance off, you know, we made that decision, it is made, as far as I am concerned, in the direction and, you know—and I have received no direction otherwise, from the executive or anybody not to follow them.

That is certainly the thing that I am telling our State Directors and others that I talked to. Let us get this as our opportunity. Now we are all in here. There are some things we are not going to like about it, but let us get the job done, get it over with, and try to get some farmers that we will all be proud to work with.

Senator KERREY. I raise this point because I must tell you that there are an awful lot of people who wonder who the Farmers Home Administration works for. Who do you work for? Do you work for the executive branch, do you work for the legislative branch, or do you operate on your own without regard for either one?

Mr. JOHNSON. We are certainly part of the executive branch, but again we try to comply with the law so I think everyone is having some input to us. I think we are working for the people a lot again through our regulatory process. Because everything we do is published and comments, you know, and we get them. And people do respond.

We have some witnesses here today that frequently respond to the things so, you know, we work for a lot of people.

Senator KERREY. I think you are setting yourself up for additional legal battles in a whole range of areas that frankly I think are unnecessary. I think that without taking away from your performance above and beyond the call of duty, as you say in your opening statement, without taking away from the effort that has been made in the last 60 days, it seems to me that an awful lot of that effort was unnecessary.

I would ask you this question. In looking at the law, the law says a borrower need only notify Farmers Home Administration of an intent to participate in restructuring.

Why was the decision made to do a top-down notification rather than having county Farmers Home Administration people, who know these people on a first name basis, contact them directly?

Why did you notify borrowers in this manner rather than allow a more personal and direct means of notification?

Mr. JOHNSON. Well, I am not sure I understand.

Senator KERREY. Well, let me try it again then.

The law says that all a borrower has to do is to notify you, yes? You are shaking your head——

Mr. JOHNSON. I am shaking my head no. OK?

Senator KERREY. All right. So tell me how you disagree.

Mr. JOHNSON. The law requires much more. There are more provisions to the law than the one that says someone would request.

This is the thing that we had the hearing about in January, as you are well aware.[1] But we have other requirements of information that we have to get. We placed what we thought was required because we had 60 days to respond. And so we put what we thought would be the minimum that would be required and then, as you know, we backed off and we opened up essentially with our so-called rule of reason. And we accepted over 60 percent of those applications under our rule of reason policy.

I think we were essentially meeting these people——

Senator KERREY. But if I am a borrower in Hamilton County, Nebraska, why do I receive a pound and half document in November of 1988 rather than a phone call from the county office saying, Bob, you have this loan and it is 9 months overdue? We have a new program here that has been passed. Why don't you come into the office and we will explain how this restructuring works?

Why was the latter not chosen rather than this material mailed out from Washington? It seems to me, particularly within the context of the administration's professed support for local control, that that would have been a better way to proceed.

Mr. JOHNSON. Certainly, of course, many times, as you are all so aware, we have been accused of not giving people adequate information to make their decisions. So we felt that we had a mandate to give them all the information.

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[1] Oversight on the Implementation of the Agricultural Credit Act of 1987—With Respect to Credit for Agriculture and Rural Communities—Subcommittee on Agricultural Credit—Jan. 24, 1989 (S. Hrg. 101-10).

Now, whether they understood it or not, that was another situation. But we were trying to comply with getting the information. And we knew, and know, that there is still much dialog by telephone and person-to-person that must take place with these individuals. And it should be taken place over, and much of the basic stuff that we require to classify as having what we call a basically complete application was information that we had been working with farmers on year after year. Even though they may have been intimidated, and I do not doubt that some were, by receiving more information.

Now, before we go out with our next mailing, we are looking at that to see if we can abbreviate the information. We can probably maybe put a statement in there and say instead of providing them actual copies of our regulations, we could probably put a statement in there and say regulations are in the County Office. We will be happy to provide you a copy if you want to come and get them. Because that is the way you have got the depth in this.

Senator KERREY. Mr. Johnson, with all due respect, I think you have taken a relatively easy job and made it difficult.

I talked to my State FmHA Administrator about the program, and I asked him, why did not your county people just call the borrowers on the phone? You know what his answer was? A lot of these people do not have phones.

Now, that is not true. Looking for a reason not to do what I consider to be reasonable is one of the reasons that people out there in the field just absolutely go nuts with the Federal Government.

Here you implemented from Washington what could have been implemented from the local level. You say you delivered the information to borrowers, and maybe they did not understand the information, but I think most people would not have understood the information.

I do not want to belabor the point, but I am struggling to try to figure our what you all think about when you are making these kinds of decisions.

Let me move to a question relating to the DALR$ system. It seems to me that Farmers Home Administration ought to immediately put out this information on the DOS system. You have a DALR$ system in place right now that is inaccessible for people. They cannot get engaged at all in a discussion because they do not know the answer until you give it to them, and they do not know how you come up with the answer.

It seems to me you ought to move immediately to a DOS operating system.

Mr. JOHNSON. Well, I assure you that we are looking to see what steps can be taken to get that more easily convertible. We would like much more information compatible with the DOS world. Even though we recognized, and I am sure you are aware that many systems are going to UNIX in the future. That is, it seems to be the future as certain as anybody can be in the high technology area like that.

Senator KERREY. Wait a minute, wait a minute.

Do you mean to tell me that you thought through the programming system based upon where we are going to be?

Just tell me why you did not select the DOS operating system that is compatible with what most of these people currently have?

Mr. **JOHNSON**. OK. I am not going to pretend to be an expert in the computer world.

Senator **KERREY**. Good. Neither will I, by the way.

Mr. **JOHNSON**. The DALR$ would have some advantages if you were localized. Many banks and others have it.

But when you start trying to interface a network and hook up a network of 2,500 offices throughout the United States and the Trust Territories, and come in for one central mainframe system, as I understand it, there is much more capability and it is much more cost-efficient to go where the UNIX assists in interfacing.

Senator **KERREY**. Let me run back what I think you have said in summary.

Are you saying that UNIX was selected over DALR$ because it was more convenient for the Farmers Home Administration—that the convenience to the Farmers Home Administration was given more weight than the convenience of the borrower?

Mr. **JOHNSON**. No, I am not saying that. We use a computer for a lot more stuff than to do Farm and Home Plans and this DALR$ obviously. It is the core of our accounting system and a maze of information. So it is used for much more than that.

But it has more capability is what I am told by the computer people. You have much more flexibility. It is much more adaptable because we have very large sums of money out there involved in this automation effort as it is. And it would be much more compatible.

We are looking—I have asked, I have asked that same question you have a number of times about why we cannot convert DALR$ to DOS? We will have to do the reprogramming because we use what we call 3B2 type memory systems, and we need that because of our hookup with our finance center. So we do not use the disc, the floppy or the hard disc that we stick directly in the computer.

We hope, with capability, we are moving now to a system that would let us do that and would let us have the capability of having DALR$. Short of that, we will have to, if we go with it, is simply get the DALR$ programs rewritten in a DOS format.

Senator **KERREY**. I think you have a format for extensive litigation, Mr. Johnson, unless with all due speed, all due speed—and I would urge you to set a time certain—you move to make this program available in DOS, and tell us what we need to do to help you get there. You have to do that.

You are setting yourself up for litigation, but you will likely come to us and you say, gee, if it were not for all this litigation, we might be able to operate this thing better. You are setting yourself up for major lawsuits because these borrowers have no idea, until the answer is given to them, what their financial position is, and then they do not know how the answer was arrived at.

And my perspective, by the way, is that of a borrower. What I am trying to do is understand this from the borrower's standpoint. I respect your doing it from the creditor's standpoint. And any time you think I am unreasonable, please say so.

But from the borrower's standpoint, it is as if they are operating in English and you are operating in a language they do not understand.

Mr. JOHNSON. Well, I appreciate your comments. I take it very seriously. And I have many of the same concerns that you are expressing here. And I assure you that we will be continuing to look into it and see what we can do as quickly as possible.

It will save us a lot of time if we could have some of those things. It would better with our guaranteed program. We understand that and we believe it. But we have not been able to get here yet with where we are with our automation system.

Senator KERREY. One final question. Let us say that I have a farmer who happens to be among the 30-some thousand who did not respond to the letter indicating he wanted to restructure his debt. You assume the 30-some thousand are no longer actively farming, or according to your opening statement, that they are not interested in trying to farm with your assistance. Those are the two assumptions.

You say of the 31,280 who did not respond to the notice, you assume that they are either (a) no longer actively farming, or (b) that they are not interested in trying to farm with your assistance.

Now, I have visiting with me from Nebraska a man who says, Senator Kerrey, I am interested in continuing to farm with Farmers Home Administration assistance. I received this notice in November of 1988, and I did not know what it meant. I called up my county office and they told me they could not help me with it. Now, what do I do?

I would like you to tell me if I am right or wrong. I say to him I have looked at the law, I am not a lawyer but, in my judgment, all he needs to do is to go down to the Farmers Home Administration and tell them he wants to apply for restructuring, that he is eligible now to go down and apply for restructuring assistance.

According to my reading of the law, he is eligible right now. Do you agree or disagree?

Mr. JOHNSON. I disagree. If we send notice, if we gave them proper notification, if he failed to respond, if it was not sent to us from the certified mail, we did another mail-out in regular mail. So if he is acknowledging he received the information and did not respond, he would not be eligible to go further.

If he contacted our office and our people made a notation that he contacted. And if our people were saying you wait for some reason, I would like to know the name of a case like that because I would certainly follow up.

Senator KERREY. You will know it soon. I have my aide who is responsible for agriculture and credit issues putting together a list of people in Nebraska who have approached me with this problem. I intend to present it to the attorney general of the State of Nebraska and have him bring the list to you in a legal form. Because it seems to me they are eligible.

It seems to me that, in fact, the second mailing that you put out is evidence that you understood that the first mailing was incomprehensible, or at least that it was not going to be sufficiently comprehensible to people receiving it.

Now, it seems to me, Mr. Johnson, and again, I am not trying to be an obstructionist at all, and I know you are trying to accomplish the objectives you set out in your testimony, but it seems to me that you are setting yourself up for unnecessary litigation.

It seems to me the law is very clear. All a guy has to do is indicate his desire to restructure and supply some information to you. That law does not provide you, it seems to me, with the kind of authority that you used in developing the application procedure that you imposed on these farmers.

With my people, I am saying that if you want to apply for restructuring, the law permits you to do it. And I believe that I am right and I believe that you are wrong.

Mr. JOHNSON. We will be happy to get those names and review them. If Farmers Home has erred by our own regulations and so forth, we will certainly want to correct that.

Senator KERREY. And I would like to correct it outside of the courts.

Senator CONRAD. Two followups on Senator Kerrey's comments.

We had earlier discussed the UNIX system and the difficulty because we just have the severe incompatibility with most operating systems in the country.

I can perhaps understand if UNIX is the operating system of FmHA why it was developed in that system.

It would seem to me that there is an obligation to develop a parallel system on DOS for the purpose of allowing borrowers and others who are interested in this system to have a means of access. It really is almost like having two languages that we would be operating on in this country. One in English, in which most of us operate on, and then have a few people operating off in Chinese or something.

And if you are not conversant in Chinese, you would have a very significant problem. And that is really, I think, part of what has happened with the DALR$ program. So I hope that you will strongly consider a parallel system in DOS. I think that would help substantially.

One other followup. The rule of reason, where did that come from? The law simply states that there be written notification, does it not? Where did we get the rule of reason as the test for eligibility instead of what the law requires, which is written notification?

Mr. JOHNSON. That rule of reason came out and was published and distributed to our field in the form of what we call Administrative Notice, which is a form of regulations that we have that can clarify. This was done in a period in which I was out in December with an emergency operation. So I was not there at the time that that was actually developed.

I must say I did subscribe to the intent of it, and have tried to comply with it. Because the first package, and many of the lessons we learn over the bulk of stuff and information we sent out had to do with our famous *Coleman* lawsuits. And we have spent many years in court. And so, there are a few things we have learned from that exercise. One, you had better overkill on getting information to people, as opposed to not getting enough stuff out.

So that, I think, probably had something to do with the package, and the volume of package, that we have sent out on this. But the rule of reason, our first regulations that were published—and I am going to ask Jack to clarify this further in just a moment—our first regulations that went out would have required every bit of information. It says they will have a completed package on our desk within 45 days, which meant they would have had responses back from verification of employment, other types of information.

We felt that the most essential things that we have from them would be the Farm and Home Plan, which they are familiar with, and should be familiar with. We wanted them to have that, their first cut at that; obviously recognizing that that is not always complete in itself. But we did need that basic financial information from them. We needed one form that they had in there where they checked that they want to have other assistance.

And what are the other two things, Jack, that we had there? The application, which is another form, the application for service. Those are forms that they have been familiar with for several years; and they were not changed all that much. So that is the basic information. And we traditionally go out in November of each year and start asking for that information, start scheduling our farmers in, whether or not we have even had this program.

Senator CONRAD. Let me come back to that. Senator Gorton has another matter that he has to attend to. Let me turn it to him for a moment. We will come back to this question.

STATEMENT OF HON. SLADE GORTON, A U.S. SENATOR FROM WASHINGTON

Senator GORTON. Thank you, Mr. Chairman. I have an opening statement, which I would like to have included in the record.

I will say only that, at least with respect to the State of Washington and its State Director there, my view is that the program has been carried out both efficiently and compassionately. And I do recognize problems that exist in other States, but I felt that compliment was in order.

Second, I have five or six questions; but due to the necessity to be elsewhere, I would appreciate you submitting those questions to Mr. Johnson in writing for me.

Senator CONRAD. We will be glad to do that. Both your opening statement and the questions will be a part of the record.

Senator GORTON. Thank you.

[The prepared statement and questions of Senator Gorton appear in the record. See page 375 for the prepared statement and pages 467–470 for submitted questions and answers.]

Senator CONRAD. Thank you. Let me go back; because your answer, as near as I can tell, is that these are things that you needed. But does not the law simply require—and correct me if I am wrong—that there be written notification? Does not the rule of reason really go beyond what is provided for in the law, in terms of the requirement of a response from the borrower?

Mr. JOHNSON. There is more than that one provision of the law. I believe I have responded to some letters, by letter to Senator Boren and others, and I do not recall them off-hand. Jack, you might recall them.

But we do, in other parts of the law that require certain kinds of information—that we have to have financial information and so forth—all of those are in the laws also. Now, there is one law that says written notification, is basically it. But there are more laws that impact on the total application process than that one law. And that is the way we viewed it.

And we still—because see, our 60 days were counting—and we had to get the balance of what was not done—we had to do that in our 60 days—and I think you can see from our numbers, I think we were quite successful at it.

Senator CONRAD. Yes. Does not the Agricultural Credit Act that was passed in 1987, simply require that the borrower provide written notification that he wants to participate?

Mr. JOHNSON. It does make that requirement, but we do not think that it excluded the other requirements by other laws that we had. I would be happy to research that and give you some more information on that again.

Senator CONRAD. Let us pursue that. I, as one Member who participated in 100 hours of hearings and markups, let me just read to you what the law says. It says that the Secretary shall consider a farmer program borrower for all loan service programs, if within 45 days after receipt of the notice required in this section, the borrower requests such consideration in writing. That is what the law is.

I must say, as one Member who participated in all but one session, that was clearly the intent, that if within the 45 days somebody gave written notification, they qualified. There was no rule of reason.

Mr. JOHNSON. Do you feel the intent, then, was that Farmers Home would start counting its 60 days from the date that the 45 days is up, which is the way we interpreted it; or was that for some other period after we got enough information for Farmers Home to start doing their work?

Senator CONRAD. Well, I am not ready to discuss the 60 days; but I am saying that I think it was the clear intent of Congress that the Secretary shall consider a farmer program borrower for all loan service programs if, within 45 days after receipt of the notice required, the borrower requests such consideration in writing.

There was no discussion of this rule of reason test. It seems to me that was a restriction that was added by FmHA that was not intended by Congress; our intention was if somebody responded within that 45 days, said they wanted to go down one of those paths, then they would be eligible for restructuring. That was what Congress intended.

Let me bring up the other witnesses, and if you can stay, we would very much like to have you stay. If we could bring up Jim Massey, the executive director of the Farmers' Legal Action Group; Cheryl Cook, legislative assistant, National Farmers Union; Benny Bunting, chairman of the Credit Committee of the National Save the Family Farm Coalition; Johnny Porch, vice president of the American Agriculture Movement, and Donna Shoop, the director of Farm Counseling Service, Memphis, Missouri.

Mr. JOHNSON. I will set for just a moment. I do have to leave very shortly, Mr. Chairman. But I would like to say that we would be happy to respond to questions that you might get from these other participants here today. I will have some staff people here. And I want to apologize to Johnny and Donna, and to others, that I will not be able to stay. I will have to leave very shortly.

Senator CONRAD. Will you have somebody here that could respond to questions that come up?

Mr. JOHNSON. I do not have a technical person here.

Senator CONRAD. All right, well, if additional questions come up, we will submit those in writing.

Mr. JOHNSON. I will be happy to include any that they might raise in my response.

Senator CONRAD. Thank you very much for your participation.

I want to welcome this panel and thank you for taking the time to participate. I think it is important to us. We have taken a lot of time already in this hearing because this is an area that deserves time.

Let me simply ask all of you to summarize your testimony. We will take your written testimony, submit it for the record as if given; and I would ask if you would take 5 or 6 minutes in summarizing your testimony. We will go through all of the witnesses and then hopefully open it up for a discussion in which we are able to have an interchange and exchange.

With that, welcome, Jim Massey.

STATEMENT OF JAMES T. MASSEY, EXECUTIVE DIRECTOR, FARMERS' LEGAL ACTION GROUP, INC., SISTERS, OR

Mr. MASSEY. Thank you, Mr. Chairman. Thank you also for the invitation to appear today. I am the executive director of the Farmers' Legal Action Group (FLAG), which is based principally in St. Paul, Minnesota; FLAG also has an office in Sisters, Oregon, where I work.

OUR WORK HAS CONSISTED OF PRODUCING A GREAT DEAL OF EDUCATIONAL MATERIALS

As the chairman knows, my organization has been involved over the last several years in representing farm borrowers, both Farmers Home and Farm Credit System borrowers across the country. Our work has consisted of producing a great deal of educational materials. I think we have conducted seminars in 32 States in the last 3 years, met with thousands of farmers and ranchers, public officials, lawyers and others, to talk about issues of Federal law and rights and responsibilities of borrowers of both Farmers Home Administration and the Farm Credit System.

LITIGATION

We are also the attorneys in the *Coleman* versus, now, *Yeutter* litigation, *Coleman* versus *Block,* originally, which originated, of course, in the great State of North Dakota. And that case, I might add, has come to resolution for most of the borrowers in the country. The Eighth Circuit Court of Appeals in December dismissed the case as moot, based upon passage of the Agricultural Credit Act of 1987.

We are contemplating at this moment petitioning to the U.S. Supreme Court on several issues that relate to that group of borrowers that Mr. Johnson identified who had been accelerated in the past. I think the chairman will recall that there were some 13,000 borrowers who were excluded from the full benefit of Judge Van Sickle's ruling in the *Coleman* case in May of 1987, in that their income releases for living and operating expenses were not restored by the court at the time the injunction was entered, nor did they get any retroactive restoration of that income.

PROVISION TO ALLOW BORROWERS TO APPLY FOR PARTIAL RESTORATION OF THEIR INCOME

There was, I think, frankly, a compromise provision in the 1987 act which allowed those borrowers to apply and to have partial restoration of their income granted during a period in which they could apply for restructuring. That was limited to $18,000 annually. Very few people were able to take advantage of that provision, both because of the manner in which Farmers Home implemented it, and because a lot of those people had, in fact, ceased actively operating because they had lost their income.

STATUS OF THE CASE

I just want to report this briefly to advise the chairman and the committee about the status of the case. The eighth circuit took the unfortunate position that Congress, in enacting what we saw as a compromise, or as kind of a stop-gap or bridge provision, effectively—and it is hard to even say this, because I do not quite understand it—retroactively modified the entitlement. This may be the best way to say it. The court held that the intent of Congress in passing this section of the 1987 act was to wipe out the entitlement back to the original point that the borrower first got it, thereby mooting out, or eliminating the claim that those borrowers had that they should have received the full measure of the injunction back in 1987.

Senator CONRAD. That was a determination by the court?

Mr. MASSEY. The U.S. Court of Appeals for the Eighth Circuit decided that in December. We petitioned for rehearing. The court denied the rehearing in February. We have now received an extension of time in the U.S. Supreme Court, and we are researching the issues. As the chairman knows, petitioning for certiorari to the Supreme Court is a very tedious, complex matter.

But the issue is whether or not it was correct for the eighth circuit to determine that what Congress intended when it granted this $18,000 bridge funding to this group of people was, in fact, to say that this is the sole remedy. That is what the eighth circuit said—that this is the sole remedy that Congress now intends these people to have, because Congress was aware of the litigation and, therefore, the matter is out of the hands of the court and has been resolved by the Congress.

Senator CONRAD. I can report, as one Member, that was certainly not the intent of Congress. What happened was a pure political compromise among a whole series of issues that had to be resolved. And there was very substantial reservation about the bridge financing. The bridge financing that was permitted was seen as a stop-gap; it had nothing to do with going retroactively, absolutely nothing; had absolutely nothing to do with the Congress concluding that should have been the only remedy. It was part of a package of overall compromises, frankly to get the FmHA provisions at all. That is the bottom line as to what, in fact, occurred here.

You will recall that, on the day that this Senator introduced the FmHA provisions, a bill on the FmHA provisions, and the very day those were to be considered by the Senate Agriculture Subcommittee on Agricultural Credit, we were hand-delivered a letter from the administration threatening a Presidential veto, from the Secretary of Agriculture himself.

And so, we were then put into a position, a very difficult position, of getting the FmHA provisions included in that bill at all. And one price for having it included was this particular provision being limited in the way that it was.

So that, in fact, is what occurred here.

Mr. MASSEY. I wish I could call the chairman as a witness in the Supreme Court. We will see if our legislative history will bear this out. That is exactly as I recall it, Mr. Chairman. And hopefully, our legislative history will reflect that that is what has occurred, so that we can demonstrate it to the Supreme Court.

Senator CONRAD. Well, I hope these comments that I made here may prove to be useful; because, in fact, that is precisely what occurred here.

Mr. MASSEY. On other fronts, Mr. Chairman, I want to direct myself very briefly to a couple of areas. I believe the other witnesses will probably talk more cogently than I about the case-by-case problems that are being observed in the field by farmers working on work-out or restructuring applications, which I am not doing directly.

DALR$ PROGRAM

Let me talk briefly about the DALR$ program, if I may. The earlier conversation this morning was interesting. I think Senator Kerrey has hit it right on the head. That is, from our perspective, Farmers Home is setting itself up for litigation on several areas, one of which is the DALR$ computer program.

The issues are legion with the DALR$ program. Let me just say from the outset that the program was never published, neither in disk form nor with the source codes, under the Administrative Procedures Act. It was put into use in December or early January without there really ever having been an opportunity outside the Agency to proof it in any way, to look inside of it.

We have to this date, at great expense to our agency, purchased a 3B2 operating system, and hired two consultants who are taking it apart top to bottom. I can tell you that one of our consultants has already made a preliminary determination concerning the development process of the program. I am not a computer expert at all—but there are some basic standards that are required generally for Government work in other areas, which I think have been developed in the Defense area, for sort of a "standard of care" in developing custom software for the Government. This consultant has determined that, in several areas, neither the procedure development or the documentation of the DALR$ program even come close to satisfying that standard.

We were also made more suspicious that, in fact, those things may not exist at all, let alone in the public realm.

We filed an FOIA request—a Freedom of Information Act request—about 6 weeks ago that was generated with a consultant and a computer expert. Farmers Home has written back and said, "Well, it is going to take us months to assemble those things."

So one would suspect that either it does not exist, and they are doing what we used to call in high school chemistry class "dry-labbing." We started with the result and worked backward, and came up with the process to justify it. So in terms of the development process, substantively and technically, and the absence of any notice and comment opportunity for the public, I think that the program stands as an enormous liability and vulnerability for the agency on procedural grounds.

PROGRAM IS WRITTEN IN FOUR DIFFERENT COMPUTER LANGUAGES

Second, in terms of accessibility, rather than looking forward, as Mr. Johnson suggested in his testimony this morning, our experts have told us that Farmers Home was looking into the past when it decided to use the UNIX operating system, and write this thing in four languages. I do not know if the chairman is aware, but the program is written in four different computer languages. One of our consultants suspects that there was very little dialog at some levels between the people writing the components, as they were written.

The source code itself is about this tall. I am indicating for the record—I do not know—it is about 6 inches of paper. It is written in Pascal, Basic and two others—I do not know these languages—they could be Greek and Egyptian to me. But it makes it very difficult to analyze it. We have had to hire two consultants and, as I said, purchase the operating system. One of our consultants is now putting it through the paces. We are actually going through and testing the thing top to bottom.

COST

The operating system alone, with used hardware, cost about $13,000 for the software and hardware combined. I would guess that our total agency commitment, not counting attorney time—this would be only out-of-pocket expenses, when we are done, is going to exceed $20,000, just to understand whether or not the thing does what it is supposed to do under the regulations.

DOS COST

Again, our experts have told us that it could have been written in DOS. To convert it to DOS, with the existing source code, we received one estimate of between $8,000 and $10,000 in software development costs. We opted to analyze the program and prepare for potential litigation, as opposed to trying to do the Government's work for it, by rewriting the program.

SIGNIFICANCE OF THE DALR$ PROBLEMS

The significance of the DALR$ problems is this. The chairman will hear from each of the other witnesses about the many, many problems that exist in figures, calculations, the changing of figures that the chairman has already mentioned, and so on. A lot of those problems are difficult to reach on any systemic level because they represent attitudinal problems, or individual case problems. What I suspect will happen is that they will all be swept up, at some point, in a major piece of litigation that will focus on the DALR$ program deficiencies, and not on the case by case errors, problems, changes, or conflicts that have existed there, but, rather, they will be swept up in a major piece of litigation—as I have said—focusing on the DALR$ problems.

OTHER AREAS

Other areas—and I will talk about broad-based legal problems. Borrowers have been excluded from restructuring entitlement at all because they are in bankruptcy or have been discharged in bankruptcy. There will be litigation on that point. It is our opinion—and our research confirms that it is a violation of the antidiscrimination provision of the Bankruptcy Code. It is also a violation of the 1987 act itself. Finally, Farmers Home has included in its regulations a bizarre requirement that a farmer can qualify for restructuring only if he or she reaffirms the debt after it is discharged. There is no provision in the Bankruptcy Code that allows this. It is basically a "magic act" that Farmers Home requires, because there is no authority for it in the Federal law at all.

FMHA DELAYED IMPLEMENTATION OF REGULATIONS

There will be litigation on the Guaranteed Loan Program. Farmers Home, again, has selectively delayed implementation of regulations, in this case 7 months after the deadline imposed by Congress. During this time, the agency continued to approve liquidations and foreclosures of guaranteed loan borrowers from the regulatory deadline in the statute—I believe it was June—until the agency actually published regulations in January. We are in contact with a number of those people whose loans were accelerated during that time.

The regulations themselves, substantively, provide no notice to borrowers or lenders of the guaranteed loan restructuring provisions, and as has been in the past, deny the right to borrowers to appeal adverse decisions unless the lender agrees to appeal with the borrower, which very seldom occurs. Those are issues that will be in litigation in the not-too-distant future.

THE ADMINISTRATIVE PROCEDURES ACT IS NOT SELECTIVE

Let me add, on the issue of delaying regulations, I believe that Congress has got to get the message across to Farmers Home that we have been unable to get across through litigation, and that is that the Administrative Procedures Act is not selective. It requires publication of rules, and when Congress says that the agency is to publish rules, and provides a deadline, it seems to us that Congress means what it says.

AGENCY HAS TAKEN EXTRAORDINARY LICENSE WITH RULEMAKING IN BOTH DIRECTIONS

This agency has taken extraordinary license with rulemaking in both directions, as I point out in my testimony. When the agency is unhappy with a piece of legislation it sits on it. The best example, recently, is Mr. Whitten's appropriations rider provision in July of 1987, in which he directed the agency to reintroduce the operating loan continuation policy which had been an administratively developed program several years prior to that. The agency said no, this program will not be in place for the 1987-1988 operating loan season because we have not published regulations yet. The agency finally published their interim regulations—I think in March 1988, under threat of litigation from my organization. Thus, an entire production year went by during which farmers were not able to benefit from that program. Again, with the guaranteed loan regulations we see a 7-month delay beyond the deadline imposed by Congress.

On the other hand, the agency has, when it has suited its purpose, been able to publish regulations very quickly. The best example of that would be mid-October of 1984 when the debt set-aside program was announced by regulation. This is a program that did not even have specific legislative authority. It was a program that was "cooked up" by Farmers Home on its own, and I think in principle it was not a bad program. It did not work for anyone, but, in principle, it was not a bad idea. But as far as we could tell, the developmental period for that entire program—again, without legislative authority—was a matter of weeks, and those regulations were published in mid-October of 1984.

RULE OF REASON

Briefly, on the "rule of reason," I agree with the chairman. There is nothing in the statute that says borrowers must submit all of the FmHA forms to apply for loan servicing. Rather, the statute merely requires the farmer to indicate, in writing, that the person wants to apply for restructuring. Why FmHA has encumbered the process with such complicated procedures—I was going to bring a copy of a book that we have written on the program to demonstrate this point—is simply beyond understanding. Our book includes a chart that one of our staff attorneys devised to show, visually, what the restructuring process looks like. It is useful, but I have studied it—I do not know how many times—and I still have to refer to it, and go back. It is a very complicated process. It seems to us, again, that the congressional intent was clear, that farmers ought not be caught up in a game of "cat and mouse" and procedural technicalities in this process.

If it is possible to restructure, everybody wins. The Government wins, the farmer wins, the congressional intent is carried out. If fewer people are allowed to apply under these "rules of reason" and artificial restraints, the intent of Congress will not be carried out.

LAWSUIT PERTAINING TO THE RIGHTS OF PERSONS WHOSE PREVIOUSLY OWNED PROPERTY WAS IN FMHA INVENTORY ON THE DATE OF PASSAGE OF THE 1987 ACT

Finally, I have just filed a lawsuit on an issue that I think is guaranteed to generate substantial litigation, and that has to do with the rights of persons whose previously owned property was in FmHA inventory on the date of passage of the 1987 act.

I represent Oliver and Marlene Wilde who are ranchers in eastern Oregon. They live on a ranch that they have lived on for 10 years. They owned it for 8 years. There was a foreclosure by a third party back in 1986, from which Farmers Home bought the property and put it in inventory.

In the first part of March of this year, the county committee met, and my clients made an offer at the capitalization value to repurchase their ranch. However, because Farmers Home regulations failed to implement a priority provision in the 1987 act, the committee selected another rancher to purchase my client's ranch out from under them.

Now, Farmers Home takes the position—and unfortunately, the lawsuit was filed 2 days after the closing—that, well, it is too bad but the other guy got the ranch, and my client should be happy to go down the road and ranch some place else.

There are two provisions in the 1987 act that are raised in this case. One is the priority for former owners in sale or lease of inventory property. It is quite clear that the priority continues in perpetuity while Farmers Home has that property. When FmHA sells it, it is to follow the list of priorities that was set up by the Congress, and it fails to do so.

And secondly, there is a provision in that section that requires Farmers Home to grant an appeal, specifically, of any denial of an offer to purchase the property. That section has also not been incorporated in the regulations, and the Office of General Counsel takes the position that that would be too cumbersome, so FmHA is not going to do it.

As I said, there are two lawsuits pending on that issue, one in Iowa, and the case in Oregon, and there will be more litigation on that point.

I would hope that this administration had learned a lesson from the *Coleman* case—and I do not mean that in an impertinent sort of way. I did not have a lot of fun doing that litigation for all those years. We spent a lot of money; we did not get any of it back. I think I said this 2 years ago in this very chamber—you were not the chairman at the time Senator Conrad, but I believe we had a dialog—and I said that we would much prefer doing something other than trying to enforce laws that are intended to help farmers when it is the agency's duty to enforce and carry them out.

The bottom line is we end up doing the agency's work for it, that Congress has expressed its intent for years and years, and we come to these hearings and we talk about—well, it sounds like two different agencies. The administrators come in and talk numbers, and about how well they are doing, and we all come in from the field and shake our heads, and say it sounds like a different agency to us.

We would hope that this administration would listen to, and perhaps even seek out, the comments and concerns of those of us in the field who have been doing this work for a long time, and hope to avoid conflict, and particularly avoid this litigation. It is going to be expensive, again; it is going to be time-consuming; it is going to be misunderstood, as has the *Coleman* case, which has been blamed for everything from failure to write-down loans to mastitis in Wisconsin, I am sure.

It is not a good way to resolve these things, but as long as we have an agency that is hostile to Congress's programs, or unable to implement them the way they are intended, we will continue to have this litigation. Perhaps that is the only way to work out some of these problems.

We appreciate the invitation, again, to appear before the subcommittee, and would ask that our entire written testimony be incorporated in the record.

Senator **Conrad**. Without objection.

[The prepared statement of Mr. Massey appears at the conclusion of the hearing.]

Mr. **Massey**. Thank you, Mr. Chairman.

Senator **Conrad**. I note that my colleague, Senator Daschle, from South Dakota, who was central to the effort to produce the Agricultural Credit Act of 1987 has joined us, and I would ask him if he has an opening statement or comment, that he would like to make at this point.

STATEMENT OF HON. THOMAS A. DASCHLE, A U.S. SENATOR FROM SOUTH DAKOTA

Senator **Daschle**. I really do not, Mr. Chairman. I understand that there has been a good deal of discussion already about the DALR$ program. I personally feel very strongly about that, and the need for this subcommittee to get as much information about it as possible.

I am going to make the suggestion that we ask the General Accounting Office to examine it very carefully, to give us their appraisal as to whether or not DALR$ is working correctly, whether it is based upon the right data, and whether or not, as we consider the very significant decisions that must be made with regard to eligibility, DALR$ can truly play the role that the Farmers Home wants it to.

So I am hopeful that we might consider that possibility, and I am sure that the hearing today will give us even more of an opportunity to consider that proposal, and many other things related to DALR$ in the Farm Credit Act. I appreciate your taking the leadership to do this.

Senator **Conrad**. Well, I appreciate the suggestion of my colleague from South Dakota, and I think it is one we ought to pursue. Based upon what we have heard here today, my own concern about the DALR$ program has increased, unfortunately, significantly. It is fairly stunning, what we have heard here today about the DALR$ program and the lack of accessibility. Beyond that, if Mr. Massey's assertions prove to be correct—and based on his past performance I suspect they will prove to be correct—there are very significant problems with that program, and ones that we ought to pursue aggressively.

So I share the concern of the Senator from South Dakota, and I agree with him. I think we ought to do precisely that.

We will proceed with Ms. Cook, legislative assistant, National Farmers Union. Welcome.

STATEMENT OF CHERYL COOK, LEGISLATIVE ASSISTANT, NATIONAL FARMERS UNION, WASHINGTON, DC

Ms. Cook. Thank you, and good morning to you, Mr. Chairman, Senator Daschle. I am Cheryl Cook. I am here today for the National Farmers Union.

THREE GENERAL QUESTIONS

Several of the things that we think could make the Agricultural Credit Act work better actually lie beyond the jurisdiction of this subcommittee, but I will just mention them in passing, in the course of looking at three general questions.

FIRST QUESTION—CAN WE IMPROVE PRIMARY LOAN SERVICING FROM HERE ON OUT?

The first question is, can we improve primary loan servicing from here on out? As Mr. Massey mentioned, most of the problems we are seeing any more are particular attitudinal problems in particular cases, rather than a systemic problem with the act overall, and what we would really like to see is more information, more education provided, not just to Farmers Home employees but to borrowers and to the support structure that works with the borrowers, in an effort to come up with a plan that will work for everybody.

COMPELLED TO THROW IN MY TWO CENTS ON THE DALR$ PROGRAM

I feel compelled to throw in my two cents on the DALR$ program since we have been talking about it all morning. Certainly it has been frustrating that borrowers cannot get their hands on the DALR$ program and cannot walk into the Farmers Home office knowing what their numbers will show.

But I think there is a larger question here on what role should the DALR$ program be in debt restructuring and are we giving it too great a status by spending half the morning talking about one stupid computer program? It is to be a tool to be used in a negotiated process between borrower and lender, and I was actually somewhat concerned by Mr. Johnson's responses to your mediation question, in which he indicated that, yeah, all parties will sit down and come up with a mediation plan that we think makes sense, and then we are going to go back and run it through DALR$. Well, what if DALR$ says no?

I would hope that, at some point, common sense will overrule this one computer program, and that individual cases can be worked out, despite what DALR$ would say.

SECOND QUESTION—CAN WE MAKE PRESERVATION LOAN SERVICING WORK?

Having said that, now I will move on to my second major area, can we make preservation loan servicing work? We have learned this morning there are many thousands of people that are going to be relying, strongly, on preservation loan servicing.

WE ARE CONCERNED ABOUT THE DROP OFF OF DIRECT LENDING IN FARMERS HOME FARM OWNERSHIP LOANS

First of all, for your right of first refusal and your homestead redemption to work you need to be financed, and I am not going to sit here and suggest that Farmers Home should be required to finance everyone who walks through the door. But we are concerned about the drop off of direct lending in Farmers Home farm ownership loans, particularly. We have to keep the agency in the business if we are going to make preservation loan servicing work.

WE WOULD ALSO LIKE TO SEE A GOOD COMPREHENSIVE RURAL ECONOMIC DEVELOPMENT PACKAGE MOVED THROUGH THE CONGRESS THIS YEAR

Along that line, we would also like to see a good comprehensive rural economic development package moved through the Congress this year. If there are jobs in town, if there is training to grow new crops with greater market potential, certainly, any kind of steady income is going to make any borrower a better financing prospect.

CONSERVATION EASEMENTS

And finally in this area, we would like to see resolution of the question of whether conservation easements taken on inventory land impinge on the former owner's right of first refusal. Are we in fact giving the Fish and Wildlife Service the right of first refusal on inventory property?

THIRD QUESTION—IS THERE ANYTHING WE CAN DO FOR BORROWERS WHOSE RESTRUCTURING PLANS HAVE BEEN ACCEPTED?

The third major question is, is there anything we can do for borrowers whose restructuring plans have been accepted? And that may seem like an odd question. You may think the job is done for those people. We would suggest that it certainly is not.

ABSOLUTELY HAVE TO RESOLVE REMAINING TAX PROBLEMS ASSOCIATED WITH DEBT RESTRUCTURING

We absolutely have to resolve remaining tax problems associated with debt restructuring, as both of you are well aware, and capital gains questions remain for shared appreciated mortgages, even though we have resolved some of the debt write-off questions that existed in 1988.

Mr. Chairman, we promise you our best effort in trying to move your proposal through the Finance Committee to resolve this problem. I have had too many people call me and say, "I have been accepted, I am going to bankruptcy anyway because I cannot take the risk." We need to continue Farmers Home direct lending for operating funds. It seems like a good source of making those restructuring plans work. They need operating capital, and from what we have seen, the guaranteed loan program has not been meeting the demand.

On a larger scale, we need to have a farm bill that allows producers to recover their costs of production from the marketplace. We have done no one any favors if we have restructured their debt, and leave them out there under the current agricultural price structure.

WE NEED TO FIND OUT IF CREDIT SUBSIDY PROGRAMS ARE TO BE CONSIDERED TRADE DISTORTING BY OUR GATT NEGOTIATORS

And finally, perhaps most importantly, we need to find out if credit subsidy programs are to be considered trade distorting by our GATT negotiators. If there is even a chance that Farmers Home programs are going to be negotiated away in Geneva, or somewhere other than the United States, this subcommittee absolutely needs to know what is going on and we have to be prepared to deal with it, and, with that I will conclude my remarks.

[The prepared statement of Ms. Cook appears at the conclusion of the hearing.]

Senator CONRAD. Thank you very much. Next we will hear from Benny Bunting, Credit Committee Chair of the National Save the Family Farm Coalition. Welcome, Mr. Bunting.

STATEMENT OF BENNY BUNTING, CREDIT COMMITTEE CHAIR, NATIONAL SAVE THE FAMILY FARM COALITION, OAK CITY, NC

Mr. BUNTING. Thank you.

ATTEND THIS OVERSIGHT HEARING WITH PURPOSE AND DETERMINATION

We attend this oversight hearing with purpose and determination because back home fellow farmers and ranchers across your land are fighting for personal and community survival. The charge I have been given by FmHA borrowers is to impress upon you the imperfections, misinterpretations, and misapplications of the 1987 Credit Act.

EXAMPLE—MR. "X"

Now we have been talking about the DALR$ program. I want to go over a farmer, Mr. "X", and let's just look at the input figures that go in, if it has to go down to a 5-year deferral, and see how anybody can survive. The commodity prices were issued in an early December Administrative Notice [AN] and have been revised. These predict a 5-year reduction in commodity prices.

SOURCE OF THE FIGURES

The source of the figures that I will be using come from FmHA AN-1857, exhibits A and B. I will be using four commodities: corn, soybeans. Then on another farm it will be a poultry operation which will be broilers and turkeys.

The following computations are to be used in a row crop farming operation. Now corn will drop, over the crop production years of 1990 through 1994, 24.6 percent—according to FmHA's figures—

24.6 percent of 1988's prices, what it will actually drop. Soybeans will drop 27.5 percent of 1988 production prices for years 1990–94.

Farmer "X" has a farming operation of beans and corn. The 1988 gross income from corn was $80,000, from beans was $80,000, for a total of $160,000. Estimating expenses to be 75 percent of gross income, operating expenses were $120,000. Farmer "X" has a viable, feasible operation with $40,000 to pay family living and service their debt obligation—or do they? Let's feed this information into the DALR$ program and the projection will be: income from corn, $60,320 and for beans, $58,000. According to the FmHA AN, expenses have climbed by 20.1 percent of 1988 figures, resulting in expenses of $144,120. Consequently, post-1988 gross income is $118,320 and expenses are $144,120. The question asked Farmer "X" is, "What kind of farmer are you? You have squandered and mismanaged a farming enterprise with a gross profit of $40,000 into one that has losses of $25,800 per year (a net change of $65,800)?" How can any farmer go into this program? I am amazed at the figures that they have, of showing any restructuring. When you have to use the figures that come out on this AN, and a reduction that is going to be in the form—I do not see how anybody is getting anything but recovery buyout.

But it is even as bad on the other side, to show how idiotic these figures are.

FARMER "Y"

The next farmer. Farmer "Y". He owns a poultry farm. According to the same FmHA projections, broiler income will increase by 12.6 percent of 1988 prices for production years 1990–94. Turkeys will increase by 43.8 percent, and using a gross of $40,000 for broilers, $46,000 for turkeys, enter the figures into the DALR$ program and the projection, the broilers will come out as $45,040 and turkeys will increase to $66,148, which gives you $25,188 for additional income for debt servicing. This is idiotic. No poultry growers I know of have had a minimal increase. It is all on contract. They have not had any increase in over 3 years—the personal ones that I know of—but this DALR$ printout is going to show them that they have $25,188 to service additional debt.

Senator **CONRAD**. They had better go out and borrow some more.

Mr. **BUNTING**. The way that debt schedule is going to show they are going to have to. It is going to show that they can make their payments, and there is no way in the world they can do it. That is corporate income. I mean, they might go up. Turkeys might go up, but the farmer is not going to get it. The integrators might. But it is going to show up on the farmers flowsheet. That is ridiculous.

INPUTS ON THE DALR$ PROGRAM ARE RIDICULOUS

The inputs on the DALR$ program are ridiculous, to start with. But that is just one of the problems we have. That, to me, is one of the biggest ones, because I do not see how anybody is coming out. This is such a big problem in an area I am from, or, in the western part of the State, really, which is several 100 miles from everything.

We have actually run 30 cash-flows for people for the DALR$ program. Not a single one, cash-flows, on the farming operation; not a one because of these input figures that are going in.

Senator CONRAD. Well, the basic reason, I assume, is when you have commodity prices plummeting, according to their projections—and we see the same things in our part of the country—wheat prices down 25 percent over the period, and expenses up about the same, it is pretty hard to cash-flow any operation if your revenue is dropping dramatically, and your expenses are jumping. Even if you were a cash-flow operation today, you are certainly not going to be at the end of the period.

Mr. BUNTING. Not according to their figures, especially.

Senator CONRAD. May I just interrupt, and indicate that one thing we perhaps should do in requesting the study is to also ask what the basis was for these projections of expense and income, prices and expenses. What are the bases for those projections?

FMHA MONKEYS WITH THE FARM AND HOME PLAN

Mr. BUNTING. Every farmer that we have talked to, FmHA monkeys with the Farm and Home Plan, but even if he does not monkey with it, when it comes out of the computer and it shows these kind of figures—"Hey, I had a positive cash-flow from this thing coming in." You know, "I was going to make money out of beans and corn in my Farm and Home Plan." And when it comes back, these figures are coming out that have been punched in, and everyone I know says, "Hey, that guy monkeyed with my figures." And he has; the computer itself has.

Mr. Johnson did not address, when you were questioning him, the 35,000 that responded, initially, to their package. There were basically 4,000 that he said responded inadequately. He never addressed what has happened to those 4,000. I think in a previous hearing here, he was asked to go back and reassess their position. I did not see where they have done anything to those 4,000 borrowers.

We would like to turn our written testimony in, and we have testimony coming in from groups throughout the country, that we would like to go into the testimony. But I would like to hit several of the key points that we have.

APPRAISALS

In some areas it seems appraisals are being done; in other areas, it seems—I know the North Carolina State Director says that appraisals are necessary if the computer run shows a write-down. Says then it is necessary to go back and have the appraisal. That is idiotic. You know, if the appraisal was too high, it is going to throw the whole thing out to start with, where there will be no write-down, no restructuring. They will throw it automatically into recovery buyout.

The appraisals should be done by competent appraisers, but when we are limited to three, and then Mr. Johnson did not ever mention that we were limited to three. He actually leaned toward saying, if we came in with an incompetent appraisal, that it would be accepted, but that is not the way it is being treated. They give you a list of three. You pick one of those three, and sometimes the ones on that three are ones that are being contacted by themselves to do their appraisals in other districts, and that is a big problem.

He talked about the appeals, and you were talking about the negotiating, privately; but you have 30 days for the appeals process. We are having people that looks like they are going to run into problems, and they are not aware that the deadline, or the timeframe does not change when they go into these private meetings with their FmHA supervisor. That their 30-day timeframe has already been initiated. It does not start when they finish negotiating with the FmHA County Supervisor. It started when he got that letter.

And so we do not want farmers to be caught up into this thing that looks like they are trying to work with them, and then all of a sudden, that does not work out and the time for his appeal has lapsed, and that looks like it could be something of a problem.

OPERATING LOANS

Our borrowers are not getting operating funds for the current year, if they are in the process of being restructured, or going through the DALR$ program.

Even if they have been borrowers in the past, going in and asking for a regular OL loan, being denied, they are not being told that still, you might qualify for the continuation loan. And in meetings with our State Directors, we are told that it is not up to the County Supervisor to inform the borrower of the programs. He is in a business. He should know it, I mean, and that is how hard line they are coming down. Even when they would qualify for a continuation loan, they are not being told that, and they are automatically being denied and sent out the door.

That is a major problem because we definitely need the operating funds to be available. The Fish and Wildlife plans on the inventory property. I am not sure there has ever been any legislative authority that Fish and Wildlife has jurisdiction over that. We have been trying to do some research on it.

It looks like, from what I can understand, it was just said that when inventory property came into the FmHA's hands, there should be a knowledgeable plan, and that through the administrators of the FmHA, and Fish and Wildlife, that they have gotten together, and Fish and Wildlife has been established as that agency to develop that plan. But we would like to actually see what the legislative history has been, and if U.S. Fish and Wildlife is being overly dominant—and they seem to be overly dominant in looking for habitat in our area—any place that has a ditch, creek, whatever, on it, is coming under the easements as habitat, when it is not the best plan for the farm itself, and definitely should not take precedence over the former owners.

RIGHT OF FIRST REFUSAL ON INVENTORY PROPERTY BE EXERCISED FIRST

And I think that is the one solution we would like to see anyhow, is the right of first refusal on inventory property be exercised first, because inventory property is going to greatly increase because you saw recovery buyouts are being offered, so it is going into preservation, which there will be some conveyances.

There is going to be a problem because the 1987 Credit Act says that we should be able to go at the negotiating table, and at the time that I sign over, convey my property to the FmHA, they also have the papers for the leaseback, buyback, with options prices, which are the repurchase prices.

If that is going to have a deed restriction on it later, I am not going to be fully aware of what I am signing into. So something really has to come out, plain, on the board table.

Senator CONRAD. All right.

Mr. BUNTING. My time is about up, so we can give somebody else, but we have a lot of issues that we would like to see covered. The training for the FmHA county committees is another one, but we have it in our prepared testimony, and we would certainly like for that to be addressed.

[The prepared statement of Mr. Bunting appears at the conclusion of the hearing.]

Senator CONRAD. All right. Mr. Porch, national vice-president of the American Agriculture Movement. Welcome.

STATEMENT OF JOHNNY PORCH, NATIONAL VICE-PRESIDENT, AMERICAN AGRICULTURE MOVEMENT, INC., BROWNSVILLE, TN

Mr. PORCH. Thank you, Mr. Chairman, and members of the subcommittee. I appreciate the opportunity to be here today to share with you some of the views I have concerning this agency and the Agricultural Credit Act of 1987.

VICE-PRESIDENT AND FARMER

I am going to identify myself. I am currently the national vice-president for the American Agriculture Movement. I am a farmer. I raise cotton, soybeans, and vegetables in Brownsville, Tennessee. I am also a credit counselor in my area for FmHA and I have worked with FmHA for several years.

GOOD WORKING RELATIONSHIP WITH FARMERS HOME

To briefly summarize this statement, I differ a little from the members of the panel, in that I have had a good working relationship with Farmers Home. I have been able to go into Farmers Home, and sit down after the initial packet had been returned. If there was problems with the cash-flowing, I was able to go in, change some figures, sit in with the Farmers Home supervisor, make the changes, and make it work.

I have talked with them on the State level, and the national level, when necessary. I have found that very seldom that has been necessary. The county people and the State people have, it seems like, bent over backward to help us, and for that I have been truly grateful, and along with all the other farmers.

THERE ARE PROBLEMS

I think most of the problems, though, lie in personalities more than anything else. Sometimes, if a borrower has had some bad relationships with the FmHA, the committee, or the Supervisor, has rejected a loan in the past, he will go in with a—more or less—a chip on his shoulder, and this is something that I, as a, I guess a mediator for the two, have to correct prior to working up the actual program. And in most cases we have worked it out to the best, not only for the farmer, but the FmHA as well. There are problems in Texas. I think the biggest problem down there is personnel, or lack of personnel, where one County Supervisor will be overseeing two or three different counties. Again, personalities come into a big play down there.

PROBLEM—IMPLEMENTING 45-DAY NOTICE

I would like to note, also, that one of the problems, though, that arose was the timing in which they implemented this 45-day notice. With harvest in most areas, and the holidays, a lot of farmers were unavailable to sit down with the lawyer and accountant to work out these FmHA notices and get them in.

They did not understand them. It created another problem in that the current FmHA borrowers were placed a little later on the list as getting operating loans for the next year. These notices, with the FmHA having 60 days, put it somewhere around mid-March, I would say, before they had a chance to start looking at the regular operating loans.

Now I am happy to say, in my home county, we are 85 percent completed with the direct operating loans for 1989. It is a little late. Most farmers were assured by Farmers Home that the money is coming, just be patient, we will work it out, and so far they have.

And like I said, I have had some good working relationships with Farmers Home. I think in Tennessee, they are committed to try to make this work. I do know that there are problems in Tennessee. I was asked, as I entered the hearing room this morning, to submit a letter from an attorney from Nashville on mediation.

And if I may, I would like to enter these letters into the record. I do not know the case. I am not familiar with it. They did not call me. But I would just like to emphasize that I have had nothing but a good working relationship with Farmers Home, local, State, and even on the national level in Texas.

Senator **Conrad**. All right. Very good.

Mr. **Porch**. And I thank you.

[The prepared statement and letters of Mr. Porch appear at the conclusion of the hearing.]

Senator **Conrad**. And we would be glad to enter those letters into the record as well.

Mr. **Porch**. Thank you, Mr. Chairman.

Senator **Conrad**. Next we will hear from Donna Shoop, Director of the Farm Counseling Service of Memphis, Missouri. Welcome.

STATEMENT OF DONNA SHOOP, DIRECTOR, FARM COUNSELING SERVICES, INC., MEMPHIS, MO

Ms. **Shoop**. Thank you, Mr. Chairman, and Senator Daschle, for having me here today.

FARM WIFE AND REPRESENTING FCS

I am Donna Shoop of Memphis, Missouri. I, too, am a farm wife who has corn, soybeans, and wheat, and hogs on our farm. I represent today the Farm Counseling Service of Missouri. This is an organization that was developed by farm families to facilitate improved borrower-lender relationships. By the process of learning procedure and policy, we began representing, as counselors and mediators, farm borrowers experiencing financial difficulty. We have continued to do this since this office was established in 1984. Since that time our office has worked with approximately 1,000 farm families directly with their lenders and in our office, with countless numbers through workshop and through our monthly publications.

CONCERN DEALS WITH THE BROAD INTERPRETATION OF EXISTING REGULATIONS

Our concern deals not with the policy or the legislation, but with the broad interpretation of existing regulations, regulations we feel, if fully implemented at the county level would allow for more families to qualify for restructuring.

BORROWERS

In Missouri, there are 8,915 FmHA borrowers. 3,266, or 37 percent of these borrowers received the notifications. 2,966 borrowers applied for restructuring, and 300 packets were returned to FmHA by the post office with no forwarding address.

Of those borrowers responding, 15 percent or 432 borrowers qualified for restructuring. Only 6 percent of those borrowers, when applying for restructuring, had restructuring write-downs.

BORROWERS WHO APPLIED FOR RESTRUCTURING BUT WHO DID NOT QUALIFY FOR RESTRUCTURING

For the purpose of Farm Counseling testimony, we would share our concerns on 25 percent, or 743 of the 2,966 borrowers who applied for restructuring but who did not qualify for restructuring. I am presenting data from Farm Counseling Service's office, and from Missouri Interfaith Coalition, from a survey of 3,000 borrowers that received the DALR$ packet.

Interfaith Coalition will present further testimony that will be submitted at a later date here on their processing of other data and the results. One of our main concerns is the plan development using historical averages.

CONSIDER DISASTER YIELDS WHEN COMPARING HISTORICAL PRODUCTION TO THE PROJECTED PLAN

FmHA regulations direct that the County Supervisors should consider disaster yields when comparing historical production to the projected plan. A Missouri AN, 723, dated December 16, 1988, provided a county-by-county declaration of the history of disaster years by county. Many County Supervisors did not inform the borrower, or the operator to use county averages in place of disaster yields of adjusted averages to county average, after the plan was being reviewed by the County Supervisor.

Therefore, many crop yields reflected actual 5-year production yields, when, had the disaster yields been considered, the average may have been increased by as much or more than 10 bushel per acre.

CRP WAS ANOTHER PROBLEM

CRP was another problem. When you went into CRP your major changes was maybe in the livestock enterprise, loss of rental property which rapidly affect expense-to-income ratio when considered.

The above-mentioned changes decreased the amount of expense necessary to generate a DALR$ income. CRP virtually has no expense on the income it provides after the first year's seeding. This can reduce expense-to-income ratio by as much as 20 to 30 percent, yet these changes the farmer made to increase his position were not considered when projecting his viability in the future by the County Supervisor.

COMMODITY PRICES

Commodity prices has been mentioned here. That was one of the main things in our working up the Farm and Home Plan. Commodity prices being used in the plans are another very serious consideration.

County Supervisors are utilizing the low figure in all plans contrary to State guidelines which project commodity price ranges. This differs as much as 50 cents per bushel on soybeans, 20 cents per bushel on corn, and 10 cents per bushel on wheat.

Results from our survey of clients who received the notifications underscores these problems and backs this up.

Thirty-nine percent were not told they could use county averages in place of disaster years.

Seventy-seven percent had major changes in their operations that were not considered in the past history used to develop the plan.

Fifty percent were given no explanation as to what expense-to-income ratio means, and how it would affect their operation.

Each of these considerations will affect the ending dollar amount, or the balance available. After all considerations, the balance available is the one and only figure that the County Supervisor enters into the DALR$ program to calculate plan feasibility.

One of my points is, how many of those 743 borrowers who did not qualify for restructuring would have, if they were given all the above options?

SECURITY AGREEMENTS ARE ANOTHER PROBLEM IN MISSOURI

The security agreements are another problem in Missouri. Many County Supervisors are instructing borrowers that they must sign a new security agreement, which includes not only base security but all growing and hereafter acquired crops, livestock and general intangibles, before DALR$ can be run.

The national FmHA office, and State FmHA office say that this is not the case, but FmHA can get the security agreement signed on the basis of the annual year-end analysis.

This has happened to several of our farmers in Missouri. One example is a farm couple went in, and the first thing that they did was put the security agreement in front of them. They signed the security agreement, which included the 1989 crops. He has not been restructured yet. He cannot get a bank loan for operating money because he cannot get a subordination from FmHA who did not have the authority to do this, and they did it, and this couple is still trying. I do have that file with me today to present to Jack Hertzler later.

Our survey showed that 13 percent of the farmers signed new security agreements prior to the DALR$'s program being run. Twenty-six percent of those who signed received no explanation as to what it was, or what it would mean to their farming operation if they could not be restructured. Seventy-three percent did not sign the new security agreements, but in almost every case they were asked if they would sign it.

FILLING OUT FORMS

FmHA's policy states that county offices should handle borrowers seeking assistance in filling out the forms, explain to the borrower that it is their primary responsibility for completion of the forms. We will want the primary responsibility of completion of the forms to rest with the borrower.

Results from our survey show:

Fifty-two percent of the borrowers set through the County Supervisor reworking the Farm and Home Plan, and their historic averages.

Forty-eight percent report that the term "DALR$" was not explained nor were its implications.

Thirty-eight percent reported that the Softwood timber program was not explained.

Fifty-two percent said the conservation easements were not explained.

Thirty-nine percent reported that the net recovery and its ramifications were not explained.

Forty-six percent report that shared appreciation was not explained.

Fifty-one percent did attend workshops to secure answers and help in getting the Farm and Home Plan forms filled out.

Thirty-nine percent were not aware of the appeal process.

Forty-nine percent were not instructed, nor have they consulted with a CPA regarding tax consequences of any write-down.

Seventy-two percent of the borrowers responded that they were not present when the DALR$ was run.

Thirty-five percent of the borrowers responding were not given the opportunity to review the plan the County Supervisor prepared.

POINT TO BE MADE

One of our points is, how can a borrower determine a sound financial direction, to feel that he was given every opportunity to restructure, if he does not even know what the process is, or what tools were actually available to him?

FISH AND WILDLIFE—LEASEBACK/BUYBACK

Fish and Wildlife—leaseback/buyback, Ms. Cook highlighted on it; every one of us has. That is a major problem in Missouri and other States.

MEDIATION

Mediation is just getting started in Missouri. We are just getting our mediators set up. I just talked with them again this last week, setting up appointments with them, with the farmers that we are working with.

They are already booked up in Missouri on mediation. We had 245 borrowers that have requested mediation. They are booked up and they now have to further hire more mediators in the State of Missouri. So that is going to be a long process. One of the letters that just came back yesterday, when I talked to the girls from Missouri, the mediators are telling the farm borrower, do not cancel your appointment, you only have a one-time option for mediation. We do have that letter and we will be submitting that in testimony. They are trying to get it up to us.

APPRAISALS

Appraisals are very much a big problem. They have increased to 20 percent in the State of Missouri from 1988 to 1989 and 26 percent of our survey people who responded have experienced this increase.

CONCLUSION

In conclusion, the intent and reality are very far from being one and the same. Answers are very hard to find, or at least no one wants to commit themselves to what is regulation and what is the so-called gray area. We no longer have a Truman, "The buck stops here," philosophy. Our testimony today represents farm borrowers with an average of 25 years farming experience. No other industry has bled in the 1980's as much as the family farm industry.

Congress has intended that they be given every chance, every opportunity to continue on the farm. We challenge and submit that while the regulations are in place to provide that opportunity, the act of delivery of each and every opportunity is not being extended to the borrower by the Farmers Home Administration.

I thank you, and we will have written testimony to submit further; and I also have the Missouri AN's, national AN's, to back up my testimony, plus our survey.

Thank you.

[The prepared statement with attachments of Ms. Shoop appear at the conclusion of the hearing.]

Senator CONRAD. I appreciate that very much. I would be interested to ask the witnesses who are here, and any of you and all of you who care to respond, if you were a member of this subcommittee, what would you think this subcommittee ought to do to assure that FmHA pursue the congressional intent?

What are the steps that you would like to see us take? Anybody want to respond to that?

Ms. **Shoop**. Can I respond first?

Senator **Conrad**. Yes.

Ms. **Shoop**. I have known Jack Hertzler and Mr. Johnson for quite some time now; and it seems like when we have problems, we come to the national level, because we cannot get it resolved at the State level. But they tell us that is not the way it is supposed to be; just like the subordination agreement we were talking about.

They tell me that is not the way it should be. They should not have the subordination. They should give it back so the farmer can do this. However, we go back to the State level. It seems like a lot of our States—it is one of our major problems in this whole policy—it is the County Supervisors and the State directives, on some cases, that are not understanding what they really should do.

Now, if you can get this national level to tell me yes, I can do this, then they will do it. And we have had to go that way several times. And that is not necessary. I think one of the things we need to do is consider who our County Supervisors are and what their background is, and why they are still there when maybe they are not getting along with that particular borrower. There are things like this that look to me like they need to be done.

Senator **Conrad**. Well, in fairness to FmHA, we have handed them a very complex package. Somebody has to implement that package; and at the local level, it falls to the County Supervisors. And County Supervisors have not necessarily had the training or the background to take something of this complexity, with insufficient training, and implement it the way Congress intended it to be implemented.

I mean, that really falls to the management responsibility of the State offices, and the national office, to back-stop those local operations to make sure that, in fact, the intent of Congress is faithfully carried out.

I think we can all say that FmHA has made an extraordinary effort here. The local people have made a substantial effort. They have worked very long hours. They have worked very hard. But at the same time, I think we can conclude we are falling far short of what was intended. None of us like to see, for example, a computer program all of a sudden be raised to the level of a deity, and determine the outcomes of people on some basis upon which people do not even understand what went into the assumptions. And that is happening. There is insufficient communication. Any time that happens, things go awry. I think we have certainly identified some of the problems here today.

Others who might want to address the question of what this subcommittee ought to do?

Mr. Porch.

Mr. **Porch**. I think one of the bigger problems is the—and I do not know how you could address it—but it is communication between the national and the county level. I realize they have to go through the State; but somewhere they lose—the translation of it gets lost—the meaning.

Like I said earlier, you have cases where the FmHA Supervisor is a little not-too-friendly with this particular borrower, and it might be vice versa. And you have a communication problem because he will interpret this AN as one way; and the borrower will walk in here and say, "I need to do this."

And he says, "No way."

Then everybody gets mad, or madder. I think that if there was any way to improve the communication between the national level and the local level, it would help as much as anything that we have right now, other than some of the problems we face with the DALR$ program, using yields and what have you.

I do not know. We were fortunate, I guess, in Tennessee. I talked to the local Supervisors. They informed me how they wanted to do it; what particular yield they wanted to use. We have had—3 out of the last 5 years have been disastrous. He said, "Let's go with the county average."

No problem. Worked it out that way. Everything works smooth, not only in my county but the surrounding counties, as well. And we had one set of rules that we all went by. We did not go in and try to prove this farm's yield, unless a farmer had the actual yields. But in most cases—well, in all the cases I worked with—we went by the ASCS-established county average.

Senator CONRAD. Let me ask you this, Mr. Porch. Were many of the farmers that you worked with restructured?

Mr. PORCH. Yes, sir. I have had farmers with debt write-downs. I have had farmers who took, and wanted to take, the recovery value buyout. I have had farmers—I have one who is going to the leaseback/buyback—we are going to voluntary convey.

And this came from the national office. I talked with Jack Hertzler, or Keith Smalley, or Sox Johnson, one of the people in FmHA. And I said, "Look, this is the problem I am facing."

I said, "The guy does not show positive cash-flow. His farming operation has come down to the degree that he cannot service that particular debt."

Senator CONRAD. Yes.

Mr. PORCH. I said, "Give me an option."

He said, "Voluntary convey—FMHA financing—rebuy the farm."

I said, "OK, that will work."

Senator CONRAD. All right. Other comments that people might have?

Mr. BUNTING. I have one. I am not as friendly as they are. I am a farmer. There is not but one set of people that is losing in this thing; that is the farmer. If the regulation comes bad, this FmHA Supervisor got paid while he was misapplying this stuff. The farmer did without. So that is the people that are really suffering.

Mr. Johnson talked about all this extra time. They were paid for their time. There has been an awful lot of work going on about farmers and farm groups. The people are not being paid for it; and they are the people that are suffering. They can do whatever they please. All it does, it is washed over later. I mean, yes, we might change it

That does not change the hurting that happened; and that guy still got paid trying to buck the system. And I do not know how you are going to address it; but to me, that is the meat of the problem. Until it is accountability, and accountability is going to have to hurt, it is not going to change. They are going to get away with whatever they want to. There is no incentive.

Senator CONRAD. All right. Ms. Cook.

Ms. COOK. I will have to jump in on this one, too; sure. We cannot legislate attitudes; and I think we all recognize that, even though we tried awful hard in this act to tell the Secretary that yes, you shall restructure if it is your least cost alternative; and clearly, that was an attempt to legislate his attitude.

I really think that, from here on out, that education and communication has to be the key. And one of the great success stories we had on the Farm Credit System side of all of this was a tour we did through Oklahoma where, for a solid week, we took Farm Credit System employees with us to do training sessions with the local people; and sat down together, farm advocate, Farm Credit System employee and borrowers, and said, "How is this thing going to work?"

We walked out of there, all of us, having a much better understanding of where everyone else was coming from. I would also like to throw in my 2 cents-worth of appreciation to the Farmers Home employees. On a personal level, I do not think you could have paid me enough to be a County Supervisor in the Farmers Home Administration over the last 6 months; honestly could not.

Between this program and regular operating loans, and disaster assistance and everything else they have had to do, they have really had their hands full. But as Mr. Bunting said, so have we.

Clearly, we need to work together here and push forward. If I had to suggest a specific thing for this subcommittee, I honestly think the best thing you could do is buy 50 sets of Mr. Massey's training materials; and either by the carrot or stick approach that Mr. Bunting was talking about, sit these people down and say, "You will learn it. You will understand it."

That is far and away the best material that I have seen in making people understand how this act is supposed to work. And I will let Mr. Massey speak for himself, I guess, on that. But that is my recommendation.

Senator CONRAD. Let me just echo your comment. I think the excellence of the work done by Mr. Massey in his organization really has been superb—and I think a very significant public service was performed by the work that was done. Many of us would not have as clear an understanding of the process without that work; and I include people who were involved in writing the legislation.

Mr. Massey.

Mr. MASSEY. Well, thank you, Mr. Chairman. I am flattered and gratified by both your comments and Ms. Cook's. Since somebody else brought it up, I will say that I am also an administrator. I am not just a lawyer. I have to raise money and pay staff. And I suppose, if we are going to sell books to the Government, I would rather sell 50,000 or 100,000 than 50.

Ms. COOK. We are on a budget here, Mr. Massey.

Mr. MASSEY. We did sell nearly 20,000. I think we sold—I cannot remember—17,000 or 18,000 of our handbooks during that very short period of time.

I do not mean to overly flatter the work—because a lot of people could do it. But we managed to accomplish a lot in a short period of time. The regulations came out September 14—I have a staff of only six attorneys and two legal assistants—but with assistance from the National Save the Family Farm Coalition, Farmers Union, and American Ag helping to organize people and get them to sessions, our staff, along with people from those organizations, conducted four national training sessions between September 14 and the end of October.

We had one in St. Louis; one in Denver; one in Atlanta, and one in St. Paul. Those sessions were for key people from organizations—farm advocates, credit counselors, and organizational officials—to get them ready to help their members and their neighbors under this act.

We also wrote the book that the chairman has seen, and produced a video. By December 2, we had marketed close to 20,000 copies of the book and a couple of thousand videos. If we can do that with a staff of six attorneys and two paralegals, who also have a full litigation caseload, FmHA can do better. I understand all the overtime the Farmers Home has put in, and I can appreciate that. I also understand and appreciate the overtime we have put in, and other organizations have put in.

I think that a better job, frankly, could be done. I would be happy to contract with Farmers Home if they want to hire some help and get some educational materials written that actually can get out and on paper. I understand Mr. Hertzler from FmHA has one of our game-board charts on his office wall. I was going to ask him a question today, but he is gone. I understand his chart is white; ours has been published only in green, and it has a big copyright © down on the corner. So one of the things I will want to check out is whether or not the game-board plan that Mr. Hertzler has on his wall maybe can help our funding situation with a copyright violation.

One other thing I might say, and again, I do not want to overly flatter my trade. But I have been in the business of representing people in government-program contexts of various kinds for 15 years. And there is a kind of a genesis, or it is a process, that goes on.

Farmers Home, 5 years ago—6, 7 years ago, when I first started working with Farmers Home, borrowers reminded me of what welfare law looked like even before I got involved representing low-income people, before *Goldberg* vs. *Kelly,* the first case in the Supreme Court that said citizens have the right to due process if the Government is going to take their welfare check, Social Security check, et cetera.

And eventually, by the time I got into legal practice, we were arguing due process cases where we got notices and hearings if we had prison inmates that were going to lose TV for a few weeks. And in fact, the first argument I ever made in a farm case, I said, "You know, I represented prison inmates in Utah, in the State prison, in 1974, that got more due process when they were going to lose their TV privileges for a week or two than my clients have when they are going to lose their third, fourth-generation farm or ranch." And that somehow, that was disproportionate; that was wrong.

The process that we have seen, begins when we have big litigation like *Goldberg* and *Coleman*, we stop the process. Then Congress takes a look and says, "We better write a better law here, because the administration is not going to pay attention. We cannot depend on the courts always, because they go this way or that way."

Then we get a new law; and then, we try to implement it. And the problem we have here is that we have advocates and we have credit counselors, and we have a lot of people working hard; but that bottom-line accountability is not there. And one of the reasons it is not is that in the Welfare System, we have lawyers all over the country. We have more lawyers doing Welfare law in St. Paul, Minnesota on a regular basis than we have lawyers doing Farmers Home law on a national basis, on a regular basis. That is a shocking thing to realize.

One of the reasons is, the Legal Services Corporation, of course, as the chairman knows, has been under attack by this last administration, and had its funding cut substantially. Its programs have not been able to reach out into this area as much as they might have under different circumstances.

The other thing is, there is very little incentive for a lawyer in private practice to get involved in this business. And farmers, by the time they get to this point with FmHA—if they have got $10,000 or $15,000 left—there are really two good choices in most cases. One is put it in the ground, or use it as front-end money to buyout with Farmers Home; the other is maybe to file a bankruptcy. But this Farmers Home litigation is very tricky, complicated, and there is not much to offer people as an incentive.

One of the things we might do is look at creating a specific provision for an attorney-fee award for farmers who seek judicial review of agency action; but make the standard different than that which exists in the Equal Access to Justice Act.

We have spent $.5 million, plus or minus, doing litigation in the last couple of years; won most of it, and we have not collected a dime in attorney's fees. By contrast, I have probably collected close to $1 million in attorney's fees in the past 15 years against State and local agencies, because the standard under the Civil Rights Attorney's Fees Act, which is the standard for getting fees when you sue a school system or State Government, is different from the one that the Congress has applied to the Federal Government under the Equal Access to Justice Act.

Under that act, the Government is insulated from attorney's fees if it was, "substantially justified" in its conduct.

The courts have interpreted that to mean that you have to show virtually a conscious and intentional disregard of a clear policy or statute to collect attorney's fees against the Federal Government. In Farmers Home cases, you go out to a private practitioner and say, "Well, why don't you help this guy? I will give you a book. I will talk you through the case. But he does not have any money."

And the first thing the lawyer says is, "How am I going to get paid?"

And so—and I know lawyers are expensive and people hate lawyers like the dickens, and I am not real fond of most of them myself—but the fact is, when the bottom line comes in the administrative process, if Farmers Home does not see that somebody else is going to take a good, hard look—a judge that has the capacity to say, "Do it over; you did it wrong."—I think that we are missing a major component. Once again, at a little different level, farmers and ranchers around the country are not even getting a shred, ultimately, of he kind of justice that Welfare recipients, public housing tenants, prison inmates, mental hospital patients, old people, young people—groups of low-income people who have been doing battle with the Government over the past 20 years to survive—have.

It is worth looking at, to see how we can broaden the access to counsel in cases that are appropriate for Farmers Home borrowers to have that kind of accountability built into the system. A lot of what we heard today is—and I do not mean to say that there are not systemic problems, because there are a few—but a lot of it is implementation stuff. It is a new program. It has got glitches. It is predictable. The difference between Mr. Porch's experience in Tennessee and Ms. Shoop's in Missouri demonstrate how those things can be different.

One of the ways to even that system out is to make sure that people do have adequate representation available, and that maybe we can put something specific in the Farmers Home Bill or in the Farm Credit Act to entice a few more lawyers into the game, and provide that kind of balance.

Senator **Conrad**. Let me ask this. Let me ask each of the witnesses—and then we will need to close, because I have another responsibility that I must meet—what kind of a grade would you give FmHA for the implementation of the Farm Credit Act? I would be interested to get your assessment on that kind of a rating scale. A through F, what would you give them in terms of implementation?

Jim, what kind of a grade would you give FmHA?

Mr. **Massey**. Well, as far as the regulations are concerned, I think it would be a pretty strong B. As far as what was actually drafted in the regulations, there are some specific problems. There are some omissions, now that we have seen problem areas, I think they could correct.

But the fact that there was not a major piece of litigation coming out of the regulatory process, I think it is a fairly decent B at the time they were passed—maybe now B-minus—because there are some new areas we have seen that have not been fixed.

On the other side, on the implementation side—and this may go like we used to get grades in school—you get one for attitude, one for grades. Somehow, there is that sort of parallel here. If the regulations express an official national attitude, they are not bad.

On the implementation level, the conduct in the field is going to vary from State to State, maybe even county to county. Overall, I cannot imagine that we could give it much more than a C-minus, even based on the statistics. Congress did not write this law to push the majority of borrowers into recovery value buyout. That was an afterthought, in a sense. Congress said, "Well, what are we going to do here? If they take the land in inventory, they are going to sell it to somebody else anyway. We might as well give that final option to people."

As far as the low return rate, this "rule of reason," I suppose that is worth another minus at the national level. But the low return rate and the very low turnover on the restructuring front, and the horror stories that we keep hearing around the country about changing things and attitudes, it would be hard for me to say much better than a C-minus.

Senator CONRAD. Cheryl.

Ms. COOK. Well, I guess like Mr. Massey, I would have to split this up at national and local, and different parts of the process. The regulations, I would go along with a B on regulations. They were very well-written. Of course, they relied on substantially Mr. Massey's comments to the first set of regulations issued in September.

As far as the timing of the notices in the first group of packets that were mailed out, I think we all agree that Farmers Home could not have picked a worse 45 days in the year to send those packets out; and a solid D-minus, or even an F, on the timing.

Mr. MASSEY. Here, here.

Ms. COOK. As far as the implementation—what the counties have been doing to get through all this in the 60 days that they had from Washington to accomplish that—I would give them a B, but qualified by the fact that they only got through that workload by relying excessively on the DALR$ program. That kind of negotiated process just was not there. It was either DALR$ said yes, or DALR$ said no.

Overall, I would say maybe a B-minus.

Senator CONRAD. Mr. Bunting.

Mr. BUNTING. My assessment is almost going to run the gamut from the A to the F; because in North Carolina, where I am from, I am going up closer toward the D-minus in-State completely, because we have had a little harder time meeting with the State Director. He will meet with individuals, but he will not meet with groups. To me, that is not letting farmers be a part of their destiny.

We tried in other States to have FmHA participate in some trainings earlier, and they would not participate; you know, when you had your 45 days, they had a hands-off procedure until the 19th of December, which was two-thirds of the way into your 45 days then. So I do not think that was good at all.

I do not think, now, they have the tools to work with for one thing, because I do not like these commodity prices that are going in. You know, when they go in, you are destined; and somebody is getting special treatment here to my left if they are getting a lot through. I can tell you that; because I know what is going on in the ones we are working with, and recovery buyout is what is coming down the road in a majority of the cases.

Senator CONRAD. How are people financing recovery buyouts?

Mr. BUNTING. They are not.

Ms. SHOOP. Very few banks want to take them on.

Mr. BUNTING. And they are so odd. You will find, in cases on farms now, there have been an awful lot of divorce cases that have come about. And I know of four in our area that the wife had substantial funds, and they were married. Well, she did not have substantial funds; she had substantial credit. She did not have the bad credit rating because she had not been affiliated with the farm.

So she could actually go out and get credit for the buyout. But she cannot get; you know, she is now a part of the operation. She was not originally signed onto the loan; but she cannot get the buyout. So even that will not work for those families.

There are so many glitches in the system, I am still going to say with an E. I think it has got so much room for improvement.

Senator CONRAD. Yes, all right. Mr. Porch.

Mr. PORCH. I am going to have to give—and this is again, my working relationship is on a local and State level—an A-minus; and the minus will come from small incidents such as this. It looks like the County Supervisor in this particular area did not contact the attorney or the borrower, and try to set up a convenient mediation time.

You asked me earlier if I had had any write-downs. The very first applicant that I had, they wrote-down $496,000, and have made him an operating loan for 1989.

Senator CONRAD. I tell you, we had better bring you to North Dakota.

Mr. PORCH. No.

Senator CONRAD. Maybe we should bring your State Director. [Laughter.]

Mr. PORCH. Farmers Home in Hayward County, in Brownsville, Tennessee, the County Supervisor, the District Director, they are friends of mine. I have known some of them for several years. And I think they, too, play a part in some of the other counties where I am not as familiar with the County Supervisors.

I think when Joe Blow from this neighboring county calls and says, "Look, who is this Johnny Porch, who is working up So-and-So's farm land?"

And I think they, in turn, will say, "Work with him. Try to work with him." You know, he is not doing anything but what they feel the law is intended. And like I said, I have no complaints.

Senator CONRAD. All right. Ms. Shoop.

Ms. SHOOP. Well, I would probably—nationally—the first questions that we would have nationally, when we have a problem and try to explain to them what the situation is; and their response has been, "Well, that is not right. They could not do that," I would probably give them an A.

But after they go back to the State office and get the comments on the State office on what the situation is, and to the county office, I would probably give them a C-minus or an F. I do not know sometimes. I get a little frustrated with that part of what they do.

County Supervisors, in some areas, I would give them an A; because they work very well with some of the farmers on some cases. On other, County Supervisors, they get an F; and they need to be removed. And we work fairly closely with County Supervisors all over the State of Missouri; and I do not want to have anything said that would jeopardize that part of it.

But it is truth. We have seen problems out here; and they do not need an A, any of them. I think they need to do a little bit better in what they are doing. And so overall, total, they probably would need a C.

Senator CONRAD. All right. I guess one of the observations, bottom line, for me is that we are seeing a much greater proportion of net recovery buyouts than was certainly anticipated. That is troubling to me, because that tells me the implementation of what was congressional intent is really not working out as anticipated.

And I do not want to say this; but I am going to say this. It is clear to me we are going to need a followup hearing, and bring back Mr. Johnson, and talk about some specific issues that have been raised by this panel; and go into this whole question of the very high proportion of net recovery buyouts, further discussion of the DALR$ program. And I know some would just as soon that was not the case; but I think we are left with that.

The fact is, the way they have administered it, it has been central to the process; and I think we have to deal with that issue. So I think we are clearly going to require a followup hearing, and I will intend to do that.

I want to thank all of you for participating, for your hard work on these issues. We very much appreciate what you have done. And you have the gratitude of me and this subcommittee, and I believe the entire Senate Agriculture Committee as well.

Thank you very much.

[Whereupon, at 12:21 p.m., the subcommittee recessed, to reconvene at 1:04 p.m., June 19, 1989, in room SR-332, Russell Senate Office Building.]

[Material submitted for inclusion in the record follows:]

APPENDIX

[Statistics submitted by Neal Sox Johnson follow:]

DELINQUENT BORROWERS—SERVICING ACTIVITIES AS OF APRIL 24, 1989

[Farmer Program Servicing Activities, FmHA, FP, Program Development Staff, April 24, 1989]

State	Total sent (A)	Total not returned (B)	Total returned (C)	Total returned							
				Qualified for restructure				Net recovery buyout			Other apps. (K)
				Restruct. (D)	Wrt. down (E)	W/D dollars (F)	Pending (G)	Wrt. offs (H)	W/O dollars (I)	Pending (J)	
Alabama	841	320	521	87	32	3,969,574	47	52	8,877,041	198	105
Alaska	4	3	1	0	0	0	0	0	0	1	0
Arizona	384	198	186	30	13	3,632,977	17	4	1,625,170	106	16
Arkansas	2,183	909	1,274	218	80	12,026,415	268	63	4,758,682	509	136
California	1,401	752	649	124	17	2,323,736	100	22	4,261,388	145	241
Colorado	805	340	465	57	32	5,370,053	67	5	1,867,410	188	116
Connecticut	38	15	23	5	6	405,837	0	0	0	6	6
Delaware	40	30	10	5	1	207,094	0	0	0	4	0
Florida	1,360	802	558	82	50	6,681,263	100	23	7,480,144	176	127
Georgia	3,620	1,839	1,781	90	69	13,116,200	166	65	13,124,046	647	744
Hawaii	88	34	54	26	0	0	3	0	0	17	8
Idaho	1,392	609	783	117	97	14,543,598	126	57	12,436,172	235	151
Illinois	1,589	621	968	198	93	13,550,722	86	34	5,897,963	275	282
Indiana	1,928	940	988	91	114	17,003,436	226	107	21,493,277	302	148
Iowa	2,086	704	1,382	192	72	7,645,015	168	53	7,748,092	486	411
Kansas	1,493	698	795	154	58	5,458,334	113	13	1,457,765	352	105
Kentucky	1,589	712	877	168	158	15,879,668	32	86	17,745,848	272	161
Louisiana	3,838	2,078	1,760	95	120	35,439,992	253	333	67,067,545	541	418
Maine	460	216	244	63	12	2,275,455	20	33	8,687,920	57	49
Maryland	283	129	154	56	3	119,237	0	13	1,458,855	45	37
Massachusetts	43	25	18	2	4	909,007	1	0	0	7	4
Michigan	1,379	424	955	116	216	38,882,177	70	318	78,649,651	0	235
Minnesota	3,366	1,240	2,126	223	235	28,112,392	127	124	18,448,713	1,192	225
Mississippi	4,193	2,036	2,157	231	134	31,314,475	256	80	16,541,533	693	763
Missouri	2,706	1,196	1,510	157	159	21,695,692	116	63	9,722,250	680	335
Montana	976	288	688	180	47	19,509,603	71	22	4,185,612	254	114
Nebraska	1,682	792	890	201	102	13,180,555	73	29	7,778,278	241	244
Nevada	83	37	46	6	3	775,988	0	2	327,027	22	13
New Hampshire	5	1	4	3	0	0	0	0	0	0	1
New Jersey	219	124	95	32	0	0	55	0	0	8	0
New Mexico	294	113	181	30	29	3,715,019	26	6	2,450,966	38	52
New York	1,382	839	543	140	33	5,497,151	72	14	1,834,537	262	22
North Carolina	1,835	960	875	124	58	12,940,232	36	25	7,173,581	384	248

DELINQUENT BORROWERS—SERVICING ACTIVITIES AS OF APRIL 24, 1989—Continued

[Farmer Program Servicing Activities, FmHA, FP, Program Development Staff, April 24, 1989]

State	Total sent (A)	Total not returned (B)	Total returned (C)	Total returned							
				Qualified for restructure				Net recovery buyout			Other apps. (K)
				Restruct. (D)	Wrt. down (E)	W/D dollars (F)	Pending (G)	Wrt. offs (H)	W/O dollars (I)	Pending (J)	
North Dakota.....	2,522	936	1,586	288	168	27,138,416	22	63	12,610,524	696	349
Ohio..............	1,136	588	548	96	12	2,224,592	75	17	2,737,109	317	31
Oklahoma.....	2,606	981	1,625	322	234	46,144,952	222	87	16,790,162	702	58
Oregon.........	582	299	283	43	52	8,775,479	0	35	7,287,489	79	74
Pennsylvania...........	374	165	209	38	20	3,352,200	51	13	1,238,277	56	31
Rhode Island.......	6	2	4	0	1	6,538	0	0	0	3	0
South Carolina...	929	463	466	81	17	3,570,270	97	14	3,028,712	191	66
South Dakota.....	2,240	994	1,246	278	218	26,740,003	130	31	3,318,141	537	52
Tennessee.....	2,303	1,239	1,064	321	88	14,917,560	89	26	4,293,712	380	160
Texas...........	4,975	2,889	2,086	255	111	12,407,663	283	50	11,809,330	585	802
Utah.............	199	87	112	31	14	1,758,363	5	1	95,120	59	2
Vermont.......	31	13	18	6	0	0	0	1	114,969	1	10
Virginia.........	1,001	508	493	84	22	2,745,112	49	16	2,989,372	186	136
Washington..	632	235	397	98	29	4,063,448	36	8	1,419,216	116	110
West Virginia....	260	110	150	48	8	1,273,345	12	2	67,199	35	45
Wisconsin.....	2,135	1,224	911	142	107	15,118,168	68	35	5,641,338	399	160
Wyoming......	211	70	141	22	18	5,223,034	0	12	1,729,060	53	36
West Pac Terr.........	5	4	1	0	0	0	0	0	0	0	1
Puerto Rico..	685	445	240	36	0	0	70	0	0	44	90
Virgin Islands.....	9	4	5	0	0	0	0	0	0	0	5
U.S. totals....	66,426	31,280	35,146	5,492	3,166	511,640,039	3,904	2,057	408,269.195	12,792	7,735

EXPLANATION OF COLUMN HEADS USED IN FARMER PROGRAM SERVICING ACTIVITIES REPORT, APRIL 24, 1989

A. TOTAL SENT—Number of farm borrowers at least 180 days delinquent who were mailed notices by certified mail beginning in November, 1988, advising them that they may be eligible ~~for~~ special debt relief measures under the Agricultural Credit Act of 1987.

B. TOTAL NOT RETURNED—Number of borrowers who were mailed notices and did not return any forms or respond in any way within the 45-day time period required by law. This includes borrowers who did not or could not accept the certified mail package as evidenced by a lack of a return receipt, and were remailed the packages via regular mail.

C. TOTAL RETURNED—All applications (completed, rule of reason and incomplete) returned within the 45-day time period required by law.

D. RESTRUCTURED—Number of borrowers who returned applications for debt relief and were restructured to cash-flow without write-down, using one or more normal servicing tools such as rescheduling, reamortization, reduced interest rates, loan deferrals, conservation easement and land diversion for softwood timber.

E. WRITE-DOWN—Number of borrowers who returned applications for debt relief and were restructured to cash-flow with write-down of all or a portion of their delinquent debt, in combination with one or more normal servicing tools.

F. WRITE-DOWN DOLLARS—Total dollar amount of delinquent debt written down for borrowers defined in column E.

G. PENDING (RESTRUCTURED)—Number of borrowers who qualified for restructuring to cash-flow and were offered plans to keep them in operation, who have not yet advised FmHA of their decision to accept the offer, have appealed, have requested or are in mediation, or who have declared bankruptcy.

H. WRITE-OFFS—Number of borrowers who did not qualify for restructuring and who exercised their right to buy out of their debt at net recovery value, which is the current market value of their farm reduced by what it would cost FmHA to acquire, manage and dispose of the property through liquidation.

I. WRITE-OFF DOLLARS—Total dollar amount of delinquent debt written off for borrowers defined in column H.

J. PENDING (NET RECOVERY BUYOUT)—Number of borrowers who requested restructuring for whom debt relief plans using restructuring tools, including write-down, could not be developed. The borrowers may buy out at net recovery value, may appeal, or may apply for preservation loan servicing, which includes leaseback/buyback and homestead retention with an option to repurchase in the future. These borrowers have not yet informed FmHA of their intentions.

K. OTHER APPLICATIONS—Number of incomplete applications (applications initially returned incomplete with the 45-day time period required by law, plus applications accepted under rule of reason that were not completed within FmHA's 60-day processing period), plus borrowers who paid in full or brought their accounts current since receiving their notices.

Note 1: B+C=A

Note 2: D+E+G+H+J+K=C

U.S. Department of Agriculture,
Farmers Home Administration,
Washington, DC, June 15, 1989.

Honorable Kent Conrad,
Chairman, Subcommittee on Agricultural Credit, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Dear Mr. Chairman: Thank you for your letter of May 19, 1989, and the questions to the Farmers Home Administration (FmHA) regarding implementation of the Agricultural Credit Act of 1987.

We are enclosing FmHA's responses to those questions.

We hope that these responses will be helpful. Should you desire further information, please do not hesitate to contact us.

Sincerely,

Neal Sox Johnson,
Acting Administrator.

Enclosure.

ANSWERS FROM FARMERS HOME ADMINISTRATION TO QUESTIONS FROM SENATOR CONRAD

Question 1. During the hearing, I appreciated your clarification of several issues that have been a problem across the country in implementing the act. I also want to ensure that this vital information is clearly and quickly communicated to the county offices. What actions have you taken since the May 9 hearing to notify all county offices that:

(a) Changes in the Farm and Home Plan must be discussed with the borrower prior to running the DALR$ program.

(b) Borrowers should be provided with a copy of the actual Farm and Home Plan that was used in the DALR$ calculation.

(c) Errors in the Plan or in the data entered into the DALR$ program should be corrected.

(d) The DALR$ program should be run multiple times if necessary in order to test all combinations of loan servicing options.

(e) FmHA representatives should negotiate FmHA debt during the mediation process.

(f) Independent appraisals which vary significantly from FmHA's appraisals should be discussed, and the differences should be reconciled if at all possible, by the County Supervisor and the borrower during the restructuring and mediation process, prior to the appeals process.

Answer. Attached is a draft of an Administrative Notice to emphasize that:

(a) Any changes in the Farm and Home Plan must be discussed with the borrower prior to running the DALR$ program.

(b) The borrower must be provided a copy of the actual Farm and Home Plan which was used in the DALR$ calculations.

(c) Changes in the Plan and/or data entry errors must be corrected prior to making a final decision in relation to the restructuring of the borrowers FmHA debt.

We will provide you with a copy of the Administrative Notice as soon as it has been approved for distribution to FmHA field employees.

(d) By design, the DALR$ program considers all combinations of servicing options based upon the data provided in the Farm and Home Plan. Unless there is a change in the Farm and Home Plan, or a data entry error, there is no need to run DALR$ more than once.

(e) When FmHA representatives attend the mediation or meeting of creditors, we have considered debt write-down to the maximum extent allowed and we do not have the authority to negotiate any more write-down of FmHA's debt. Therefore, if other creditors do not participate or are not willing to alter their debt repayment requirements to provide a feasible plan, FmHA cannot continue with the borrower.

FmHA is developing and will incorporate into the DALR$ program the ability to determine how much additional cash-flow the borrower's Farm and Home Plan must generate to permit FmHA to restructure the borrower's debt while minimizing the amount of restructuring other creditor's must do to achieve this additional cash-flow.

(f) FmHA will consider all information presented at mediation, including appraisals submitted by the borrower or other creditors in an effort to reach agreements which will permit the borrower to remain in farming. Any disputes that cannot be resolved in the mediation process may be appealed by the borrower utilizing the FmHA appeal process. The Agricultural Credit Act of 1987 created the Appeals Division to ensure that a third neutral party considered any and all differences between the borrower and the FmHA official making the decision and/or appraisal. The Appeals Division makes decisions based upon the facts presented. An independent appraisal is one of the facts presented by the borrower when he/she disagrees with the FmHA decisionmaker. The names of independent appraisers are provided to the borrower by the Appeals Division Hearing Officer.

Question 2. Have you notified County Supervisors that they should begin including a sentence in FmHA's adverse letters which inform borrowers of FmHA's denial of primary loan servicing to urge the borrower to meet with their County Supervisors to discuss the reasons for the denial? Please provide a copy of the language you recommend County Supervisors use with your response.

Answer. Borrowers are notified by FmHA of the denial of primary loan servicing through attachments 5 and 9 of exhibit A of FmHA Instruction 1951-S, "Notice of Intent To Accelerate or To Continue Acceleration and Notice of Borrowers' Rights." These exhibits are letters to the borrowers explaining the adverse action and the borrowers' rights. Paragraph IV, 1 in attachment 5 and item 1 in attachment 9 advise the borrower of the right to request a meeting with a FmHA county office official to explain the reasons for the adverse action. In addition FmHA is revising regulations to permit the borrower to request a meeting with the County Supervisor prior to mediation or an appeal. The borrower will request such a meeting by returning exhibit E-1 (copy attached). Also attached are copies of attachments 5 and 9.

Question 3. Have you developed a resolution or appeals process for borrowers who receive a restructuring offer with which they do not agree because they believe that an error was made in developing the offer or know that the restructuring plan simply will not work for them?

Answer. Regulations presently in effect provide that when a borrower is given an offer, but refuses, he/she will be sent attachment 9 of exhibit A of 1951-S. The Notice sets forth a borrowers' right to a meeting with the decisionmaker and the right of appeal. At this time, new information, identified errors and reasons that the plan may not work, can be discussed by the borrower and will be considered by the County Supervisor.

Regulations are being revised to permit the borrower to request a meeting with the County Supervisor prior to mediation or an appeal in cases where the borrower has questions about the restructuring offer (see attached exhibit E-1). When questions cannot be resolved in such a meeting, the borrower will be sent attachment 9 as set forth above.

Question 4. FmHA regulations published in the March 20, 1989 Federal Register require County Supervisors to provide information about the continuation policy, established in P.L. 100-71, to all persons making inquiry about FmHA programs. In particular, it requires County Supervisors to inform delinquent borrowers who request a FmHA operating loan of the program. I am told that this regulation is not being followed in many counties. How do you plan to ensure that County Supervisors notify all borrowers of the continuation policy?

Answer. The FmHA County Supervisors are required to automatically consider delinquent borrowers for continuation loans when they make application for operating loans. However, to assure that this group of borrowers is being made aware of this assistance, we will issue an Administrative Notice to all FmHA field offices, reemphasizing the notification requirements as outlined in FmHA Instructions.

If you are aware of any cases where borrowers have not been considered for continuation loans we would appreciate being advised so we can investigate.

Question 5. What is FmHA's policy regarding loan servicing, loan acceleration and foreclosure for those borrowers who are restructured and subsequently become delinquent?

Answer. Any borrower who is 180 days or more delinquent is notified that they may apply for restructuring under the Agricultural Credit Act of 1987, regardless of whether or not he or she has been restructured in the past. Additionally, borrowers have the right to apply for primary loan servicing on their own at any time.

Question 6. I'm told that some State average costs, such as commodity prices and farm expenses, that are used to determine net recovery value of a loan were modified several times during the time period when most restructuring applications were being evaluated. Are county offices required to recalculate previously determined net recovery values using the newest average cost estimate? If not, why?

Does the FmHA national office review all State average costs figures established by State offices to determine their accuracy? If not, will you begin to require this review?

Answer. State average expenses and commodity prices should not be changed from State published guidelines unless modified by the individual borrower records or borrower contracts.

We do require State Administrative Notices and written guidelines to be submitted to the National Office for postreview.

We would appreciate being advised of any cases where State average prices and expenses were modified during the restructuring process.

Regarding net recovery values, if the values used to determine net recovery values were changed during the restructuring process without good cause, we would consider recalculating the net recovery value. Here again we need to be advised of specific cases so we can review the State's handling of the net recovery calculation.

Question 7. Is the cost of holding chattel property included in the net recovery value calculation? If not, why?

Answer. Chattel Security is rarely taken into Government inventory and if so, almost immediately liquidated. Therefore, holding costs are not incurred.

Question 8. I am very interested in the number of borrowers who were offered net recovery buyouts (13,849 as of April 24) compared to the number who were restructured (3,166 as of April 24). My recollection of congressional intent of the buyout provision in the act was that most borrowers would be restructured and that buyout offers would be rare.

(a) In your view, what factors in the restructuring process resulted in the vast discrepancy between the number of buyouts Congress estimated and the number that have actually been offered by FmHA?

(b) Doesn't net recovery buyout seem to be the least cost efficient option for FmHA, and the hardest on the farmers? Why was this option the most frequently offered by FmHA?

Answer. The number offered net recovery buyout was actually 14,849. An additional 12,562 were offered debt restructure. The breakdown of the group restructured is as follows: 5,492 were restructured without write-down and 3,166 were restructured with write-down. The remaining 3,904 were offered write-down but as of April 24, 1989, had not accepted the offer.

(a) When borrowers have high debt loads owed to other creditors and limited repayment ability it is difficult to develop a feasible plan that will allow the borrower to remain in farming even considering best FmHA rates and terms and maximum write-down.

The act requires that FmHA use the present value calculation to determine the least cost to the Government. The present value calculation discounts the amount the borrower has available for debt repayment utilizing the 90-day Treasury Bill rate. The present value of the amount FmHA would receive if FmHA continues with the borrower with the restructured loan is compared to the amount that would be received in an involuntary liquidation (net recovery). If the amount to be received through restructure is equal to or greater than the amount that would be received in an involuntary liquidation, FmHA will restructure its debt and continue with the borrower. If the present value is less than would be received in an involuntary liquidation, FmHA is required by statute to offer the borrower net recovery buyout.

It should be noted that as the 90-day Treasury Bill rate increases, borrowers with high other lender debt and low repayment ability will not be able to develop feasible plans of operation and will be offered net recovery buyouts.

(b) The act requires FmHA to determine the most recovery to the Government by comparing the present value of the amount that would be received by restructuring borrower debts at or above net recovery value, to the value that would be received in an involuntary liquidation. The act requires the use of the 90-day Treasury Bill rate in this calculation to arrive at the present value. However, before net recovery buyout is offered, FmHA requests mediation or a voluntary meeting of creditors in an effort to encourage other creditors to adjust their debts sufficiently to permit borrowers to remain in farming. If other creditors are unable to provide enough debt adjustment to permit a feasible plan of operation, FmHA offers the borrower the opportunity to buyout at net recovery value.

Net recovery buyout gives the borrower the opportunity to buyout his/her FmHA loans at a substantial reduction. As compared to the 10 year shared appreciation agreement in write-down, the net recovery buyout agreement is only for 2 years at which time the borrower will be released from liability. If the borrower sells the property at any time after the 2-year period for an amount more than the original net recovery value, he/she stands to make a substantial profit.

Question 9. (a) Are County Supervisors allowed to require that a borrower provide additional collateral before he/she may be restructured?

(b) Are County Supervisors allowed to ask a borrower to sign a security agreement before restructuring the loan?

Answer. (a) FmHA does not require additional security as a condition of primary loan servicing. However, in most States Security Agreements must be updated (usually annually) to reflect the changes made where FmHA security has been traded, sold and/or disposed of in order to maintain a security interest in collateral securing the FmHA debt. Also, the Security Agreements are updated to describe security covered under the "hereafter acquired" clause provided for by the Universal Commercial Code. Most of the time the agreements are updated during the fall or spring as borrowers are working with the County Supervisors in completing their yearend analyses, applying for servicing actions, and in some cases requesting subsequent loans. If FmHA does not provide the operating credit for the crop-year, FmHA's lien can be subordinated to allow a borrower to obtain sufficient credit for essential operating expenses.

(b) County Supervisors may ask a borrower to sign a new Security Agreement as a regular practice in maintaining FmHA liens. This could occur before restructuring of the loan, but would not be a condition for restructuring.

Question 10. When will FmHA make the DALR$ program available on a DOS compatible system?

Answer. FmHA has recently purchased the Oracle relational data base management system for its field office mini computers. Oracle allows applications which are developed using its technology to be moved to a wide range of computers using a number of operating systems, including UNIX and DOS. FmHA plans to evaluate the technological and economic feasibility of converting DALR$ to Oracle technology. As part of our evaluation, we intend to determine the feasibility of providing a DOS basic platform. —

Question 11. (a) How do you plan to dispose of FmHA's inventoried land?

(b) What measures are you going to take to ensure that the sale of this land does not adversely affect land values?

(c) An Administrative Notice was recently brought to my attention regarding the sale of inventoried land. It states that this land will be sold to the highest bidder, using as a floor for bids the lesser of the market value or capitalization value. This policy seems to be contradictory to the act and FmHA regulations which say that inventoried property will be sold at a price not greater than its market value with preference given to the purchase by FmHA-eligible family sized farm operators and beginning farmers. A sale to the highest bidder is likely to result in a sale above the market value to a farm operator not in need of FmHA assistance. How do you explain this contradiction between the law and regulations, and the Administrative Notice?

(d) Will beginning farmers be given priority for the purchase of this land?

Answer: (a) The act requires that FmHA dispose of inventory farm property by first offering individuals with leaseback/buyback rights the opportunity to lease or purchase the property. When leaseback/buyback is not requested or former borrowers or operators are not eligible or cannot develop feasible plans, FmHA will advertise all suitable farm property for sale to family size farm operators for up to 3 years with a priority given to those in need and who qualify for FmHA credit. Surplus inventory property will be advertised for sale to the general public. Property that has environmental resources of major importance will be considered for transfer to a Federal or State Agency for conservation purposes after all leaseback/buyback rights have expired.

(b) FmHA has already implemented measures to ensure that the sale of farm inventory property does not adversely affect land values. FmHA regulations require that FmHA State Directors complete an analysis of farm real estate market conditions within the geographic areas of their jurisdiction and determine whether or not the sale of the FmHA farm inventory properties will have a detrimental effect on the value of farms within these areas. This determination is made after consulting with other lenders, real estate agents, auctioneers and other individuals with expert knowledge of real estate trends. Sales to former owners and other individuals with leaseback/buyback rights are not subject to this restriction.

(c) The Administrative Notice regarding sale of suitable farm property to the highest bidder has been rescinded.

(d) In the sale of suitable inventory farm property, a priority is not given, as such, to beginning farmers. However, a priority is given to those eligible family size farm operators who have the greatest need for farm income and best meet the eligibility requirements for FmHA farm ownership assistance. Many beginning farmers will likely meet this criteria. The County Committee has the responsibility of making the difficult decision, of deciding the eligible applicant most in need.

Question 12. How many loans has FmHA guaranteed for the purchase of Farm Credit System inventoried land through the Demonstration Project established in the act?

Answer. As of May 15, 1989, 16 Farm Credit System Demonstration Project guarantees had been approved.

Question 13. A number of State offices have been criticized for their method for placing inventoried land into conservation easements. The primary concern is that the economic viability of the farm is not considered when making these easement determinations.

(a) Are State FmHA offices required to consider the economic viability of farms after conservation easement before placing this land under easement? If not, why?

(b) Are farmers who are considering the conveyance of their property to FmHA in return for leaseback/buyback options informed of the possibility that their land may be placed in conservation easement while it is in inventory?

(c) Do you require reappraisals of inventoried land after easements have been granted and prior to the reoffer of the land to the previous owner?

(d) In your view, why have more borrowers not taken advantage of the use of conservation easements in return for debt write-down?

Answer: (a) The placement of deed restrictions for conservation purposes on inventory property does not take into consideration the fact that the farm may no longer be an economically viable unit once the easement is in place. The placement of a conservation easement on inventory property is in keeping with the intent of Executive Order 11988, Executive Order 11990 and other environmental laws which require such easements even though they may adversely affect the economic viability of the farm.

(b) Borrowers who are considering the conveyance of their property to FmHA and in turn, plan on leasing or purchasing the farm from FmHA, are advised of possible deed restrictions that may be placed on the property if it contains federally protected environmental resources. The County Supervisor is to discuss possible restrictions on the use of the property with the borrower at the time the borrower is considering deeding the property to FmHA.

(c) Inventory property whose use is restricted because it contains Federal protected environmental resources is reappraised prior to it being offered back to the former owner. The Agency, however, is proposing regulations which the former owner will be given an option to purchase the property with or without the conservation easements, except, natural wetland areas which have never been farmed, will continue to be restricted in its use.

(d) Many borrowers have not taken advantage of the use of conservation easements in return for debt write-down because they do not want the use of their farm property restricted by the Government, even though such easements will reduce the amount of debt owed to the Government. In addition, with the passage of the Agricultural Credit Act of 1987, many delinquent borrowers prefer that FmHA use its authority to write-down debt in lieu of the placement of an easement.

Question 14. I recently heard about a case in which a borrower who requested restructuring was denied because he had not farmed in 1988, and therefore did not fit FmHA's definition of a farmer. He had not farmed because he had been unable to get an operating loan. His 1988 income came from custom baling, which is farm-related.

Are borrowers who have not farmed over the last year due to their financial difficulties, including inability to obtain operating loans, being considered ineligible for primary loan servicing under the act?

Answer. A borrower who did not farm during the previous year should not be found ineligible for primary loan servicing just because he/she did not farm in the previous year. However, the borrower must show that a feasible plan can be developed utilizing primary loan servicing options.

Question 15. Does FmHA have adequate staff to provide the personal attention necessary for the restructuring process and the normal lending and review tasks? If not, how many more staff are needed?

Answer. Due to the backlog of delinquent borrowers in past years, the workload to process requests for primary loan servicing was a huge undertaking. This task is almost complete and existing County Office staffs along with contracting authorities and overtime will provide adequate resources to maintain program operations.

Question 16. (a) Please provide a State-by-State breakdown of the number of borrowers who became delinquent after January 1, 1989, and will be notified of their restructuring rights this summer.

(b) Will the Notices of Availability of Loan Servicing Programs for Delinquent Borrowers be sent out on July 1?

(c) Will FmHA final regulations for the act be issued prior to this date?

(d) Will the final regulations take into consideration necessary changes that have been brought to your attention during this initial restructuring process?

Answer. (a) A State-by-State breakdown of the number of borrowers who became delinquent after January 1, 1989, and will be notified of their restructuring rights this summer is as follows:

AK	1	NV	45
AL	750	NH	15
AZ	163	NJ	97
AR	1,722	NM	196
CA	493	NY	611
CO	271	NC	868
CT	34	ND	1,800
DE	27	OH	726
FL	337	OK	1,495
HI	65	OR	342
GA	776	PA	327
ID	672	RI	9
IL	1,489	SC	555
IN	848	SD	1,259
IA	2,034	TN	1,322
KA	717	TX	2,407
KY	1,326	UT	224
LA	1,377	VT	48
ME	322	VA	531
MD	159	WA	371
MA	76	WV	263
MI	897	WI	1,598
MN	1,478	WY	133
MS	1,964	WPT	6
MO	1,450	PR	637
MT	635	VI	5
NE	1,039		

There was a total of 37,015 accounts delinquent for the first time as of January 1, 1989. Our most recent report, dated May 1, 1989, shows 22,613 delinquent borrowers.

We estimate approximately 22,000 delinquent borrowers will receive Notices of Availability of Loan Servicing Actions in 1989.

(b) The Notices of Availability of Loan Servicing Programs for Delinquent Borrowers are expected to be sent out around September 1, 1989.

(c) FmHA final regulations for the act should be issued prior to September 1, 1989, if there are no abnormal delays in the clearance process.

(d) The final regulations will reflect many of the proposed changes that have been brought to our attention during the initial restructuring experience.

Question 17. Will the notification and restructuring application process be streamlined in the future for those borrowers 180-days delinquent, particularly since much of the data required in the first round of Notice of Availability of Loan Servicing Programs for Delinquent Borrowers will already be available to County Supervisors through the loan servicing options made available to all delinquent borrowers under the act?

Answer. If the delinquent borrower's county case file has current information that would normally be submitted with a request for debt restructuring, then such information will not need to be resubmitted. Existing FmHA regulations require that current Financial Statements be not more than 90 days old at the time a decision is made on the borrower's application.

Question 18. What is the extent of the training being done for County Committees to inform them of the provisions of 1951-S regulations as well as other changes in the loanmaking and servicing policies?

Answer. FmHA regulations require County Committee training on an annual basis. We agree that more emphasis needs to be placed in this area; and we will be notifying our field offices in the near future of this deficiency.

Question 19. Did borrowers in the process of applying for primary loan servicing or going through mediation get operating loans for the 1989 crop-year?

Answer. Continuation loans for annual operating purposes are available to delinquent borrowers during the time their requests for debt restructuring are being processed.

Question 20. Are borrowers being denied emergency (EM) loans because they are delinquent?

Answer. Delinquent farmer program (FP) borrowers, who have developed a feasible plan of operation as a result of primary loan service program actions which remove the delinquency, are eligible for EM loan assistance if they have qualifying production losses and operate in a natural disaster designated area.

Those FP borrowers, who cannot project a feasible plan of operation after consideration of the primary loan servicing actions and the proposed EM loan, do not qualify for an EM loan. In those cases where the primary loan servicing actions have not been completed, the borrower can be considered for "annual production loans to delinquent borrowers" (Continuation Loan).

Question 21. (a) What is the status of FmHA-initiated "creditors meetings" in those States which do not have formal mediation programs?

(b) Is there a cap on the amount that can be spent to hire mediators for these credit meetings?

Answer. (a) Fifteen States have established USDA agricultural mediation programs. In States where there is no USDA Certified Mediation Program, the Farmers Home Administration (FmHA) State Directors provide the means of conducting a voluntary meeting of creditors. The Voluntary Meeting of Creditors is conducted either with a mediator or a designated FmHA representative. FmHA State Directors are encouraged to contract for qualified mediators within their States or with the Federal Mediation and Conciliation Service (FMCS) where available.

The FMCS is currently assisting FmHA in the States of New York, Louisiana and Maine in developing mediation training and/or mediation assistance. Preliminary inquiries have been made for FMCS services in the States of Georgia, Florida, New Mexico and Ohio. FMCS has advised FmHA that they will continue to assist FmHA in States where they have the available resources. In other States FmHA is contracting with private mediators to handle increased caseloads.

(b) Where there is neither a USDA State Certified Mediation Program or where the Federal Mediation and Conciliation Service (FMCS) is not available, FmHA is contracting for farm mediation services with qualified mediators. No cap on the amount that can be spent to hire mediators has been established. In order to identify qualified mediators FmHA is developing a nationwide roster to provide a source from which bids can be solicited.

Question 22. Can loan deferrals agreed to prior to the passage of the act and publication of the 1951-S regulations be revised to take into account the new law and regulations?

Answer. Loan deferrals agreed to prior to the passage of the act can be restructured under the new terms prescribed in FmHA Instruction 1951-S.

Question 23. Have borrowers been denied primary loan servicing because other creditors did not return the FmHA forms verifying debt within FmHA's 60-day response period, or not at all?

Answer. Although there are no reports available to confirm whether or not any borrower has been denied primary loan servicing because the borrower's creditors did not return the FmHA forms that verify debt and collateral, every effort would be made to verify the information so the borrower's request could be properly considered.

Question 24. Are FmHA appraisers required to do onsite inspections of the property? If not, why?

Is a borrower notified in advance that an appraiser will be visiting his/her farm on a specific day?

Answer. All FmHA designated and contract appraisers are required to do onsite inspections of the property. Borrowers would normally be notified since the appraiser must make arrangements to visually inspect the farm and each of the farm buildings, including the dwelling, if there are improvements on the property.

[Attachments follow:]

United States
Department of
Agriculture

Farmers
Home
Administration

Washington
D.C.
20250

DRAFT

FmHA AN No._______(1924)

SUBJECT: Making Revisions to Existing Farm and Home Plans Prior to Running the Debt and Loan Restructuring System Program

TO: State Directors, District Directors and County Supervisors

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to provide guidelines when a change or revision to the Farm and Home Plan and Debt and Loan Restructuring System Program (DALR$) is needed. The intended outcome is to assure that both the borrower and the County Supervisor are aware of all revisions made to the borrower's Farm and Home Plan prior to running the final DALR$ program.

COMPARISON WITH PREVIOUS AN:

No previous AN has been issued on this subject.

IMPLEMENTATION RESPONSIBILITIES:

County Supervisors will revise Farm and Home Plans whenever changes in the borrower's operation occur or the information submitted by the borrower cannot be verified by the County Supervisor. The information submitted by the borrower must be based on reliable sources in accordance with FmHA Instruction 1924-B, Paragraph 1924.57(d). When a revision is necessary, the plan should be marked "REVISED." All revisions must be noted in red ink by crossing out any original estimates and inserting new estimates. All revisions will be initialed and dated by the borrower and the County Supervisor. When there are major revisions which cannot be easily accommodated on the existing plan, a new Form FmHA 431-2, "Farm and Home Plan," will be completed and attached to the original plan. When the

EXPIRATION DATE: June 30, 1990

FILING INSTRUCTION:
Preceding FmHA
Instruction 1924-B

FmHA Farmers Home Administration is an Equal Opportunity Lender
Complaints of discrimination should be sent to
Secretary of Agriculture, Washington, D.C. 20250

automated Farm and Home Plan is used and corrections are needed, the corrections should be made and a new printout made available to the borrower. The new printout should be dated and initialed by the borrower and the County Supervisor, and marked "Revised" to distinguish the printout as the current plan of operation. The new printout should then be attached to the old Farm and Home Plan/printout.

The revisions must reflect the borrower's current operation, managerial ability and record of past performance. If revisions arise due to new information (eg. new financial information, current yield data, etc.), the County Supervisor will meet with the borrower to discuss, date and initial the revised Farm and Home Plan. When a plan is revised, the County Supervisor must attempt to meet with the borrower to discuss revisions.

If the borrower does not agree to the revision or will not meet with the County Supervisor, the County Supervisor will document the facts in the running record. Reference of this documentation should be done by writing, "SEE RUNNING RECORD DATED ________________" at the top of the Farm and Home Plan.

A COPY OF ALL PLANS WILL BE MAILED TO THE BORROWER WITH A LETTER EXPLAINING THE REVISIONS MADE.

The borrower's request for primary loan servicing will continue to be processed using the plan developed by the County Supervisor that is based on verified realistic information. THE DALR$ PROGRAM MUST BE REVIEWED TO SEE THAT ALL DATA IS ENTERED CORRECTLY PRIOR TO RUNNING THE CALCULATIONS.

State Offices should direct any questions concerning this AN to Chris Amend of the Farmer Programs Loan Servicing and Property Management Division at FTS 475-5431.

NEAL SOX JOHNSON
Acting Administrator

Sent by Time Delay Option to States at ________ on ________; to Districts at ________ on ________; and Counties at ________ on ________ by ASD.

DRAFT

BORROWER'S REQUEST FOR A MEETING AND ACKNOWLEDGEMENT

I/we have been given a notice explaining that I/we are not eligible for the primary loan service programs. FmHA has told me/us that it will meet with me/us to (consider)(reconsider) a conservation easement and other primary service programs in an effort to develop a feasible farm and home plan. I/we request that you schedule such a meeting with me/us.

____________________ (Date)

____________________ Borrower's Signature

Note to County Supervisor:

This attachment is used when notifying borrower who returned attachement 2 of Exhibit A, that FmHA cannot provide the assistance requested with the Primary Services Programs.

See §1951.909(h)(3)(i) and (ii).

Notice of Intent to Accelerate or to Continue Acceleration and Notice of Borrowers' Rights

Name and Address

Dear (Borrower's Name):

You are not eligible for debt restructuring.

I. ☐ FmHA has reviewed your application for primary loan servicing (debt restructuring).

You cannot get primary loan servicing because your Farm and Home Plan **does not** show you can pay all your family living expenses, farm operating expenses, and scheduled debt repayments even with FmHA help.

To get primary loan servicing, your Farm and Home Plan must show you can pay FmHA at least
$ __________________ per year.

NOTE: The attached computer printout which summarizes FmHA's calculations based on your application.

II. ☐ FmHA has reviewed your application and your case file. You have broken your agreement with FmHA. Your Farm and Home Plan shows you **can** pay all of your family living expenses, farm operating expenses, and scheduled debt payments if FmHA uses primary loan servicing, softwood timber, and conservation easement programs to restructure your loans.

But you have broken your loan agreements with FmHA.

You have broken loan agreements with FmHA in the following way:

☐ You are $ __________________ behind in your scheduled loan payments.

☐ You have sold or gotten rid of property you used to secure the FmHA loan without proper approval from FmHA. This property is ____
____.
(Describe property.)

☐ You have stopped farming or ranching.

☐ You have ____
____.

III. FmHA Intends to Foreclose

FmHA will accelerate your loan because you are not eligible for primary loan servicing.

FmHA will take legal action to collect the money you owe.

FmHA may:

1) Repossess and sell your equipment, crops, livestock, livestock products, and other personal property used to secure your FmHA loan;
2) Foreclose and sell your real estate mortgaged to FmHA;
3) Stop any release of money from the sale of crops, livestock, livestock products, or other property you need to live and operate your farm;
4) Take by administrative offset any money you are owed by Federal agencies;
5) File lawsuits to collect money you owe to FmHA.

IV. WHAT YOU CAN DO TO STOP FORECLOSURE

Before FmHA can take action against you, you can;

1) **Request a meeting with the FmHA county official.**

   If you disagree with FmHA's decision that you broke your loan agreement or the decision not to give you debt restructuring, you should request a meeting with the county FmHA official. The county official can explain the FmHA decision. You can also present changes in your Farm and Home Plan which may show that you can make the amount of payment listed above in Section I.

   To ask for this meeting, check the box #1 on the "Response Form: (Attachment 6).

   Time limit: You must return the "Response Form" to the county FmHA office **within 15 days** from the date you get this letter. You should also call the county office to set up the meeting.

2) **Request an Appeal Hearing.**

   You may also request an appeal hearing to contest FmHA's decision. At the hearing you may challenge the ways FmHA says you broke your loan agreements. You may also challenge FmHA's decision that you cannot present a feasible Farm and Home Plan for primary loan servicing if your notice states FmHA believes you cannot present a feasible plan.

   You can appear at the appeal hearing and present witnesses and documents to support your position.

You may also ask for an independent appraisal of your property used to secure the FmHA loan. This independent appraisal may be important if you think FmHA has put too high or too low a value on your property when it considered you for primary loan servicing. You will have to pay for this appraisal. FmHA will give you three names of appraisers to choose from. Check box #3 on the "Response Form" if you want the independent appraisal.

If you request a meeting with the FmHA county official, you will be given a chance to appeal after that meeting.

If you do not want to request the meeting but do want to appeal, you must say so on the enclosed "Response Form."

You may request both the meeting and the appeal hearing on the "Response Form." Check box #2 on the "Response Form" to request an appeal hearing. If you ask for just the appeal hearing, you must return the "Response Form" to FmHA within 30 days of the date you received the letter.

3) Buy Out the Loan at Recovery Value.

You have this option only if the recovery value is greater than the value of the restructured loan.

[1]You [may] or [may not] buy out your FmHA loan(s) at the "recovery value" of the property securing the loan. The recovery value is $ ____________________ . The restructured loan(s) value is $ ____________________ .

NOTE: The attached computer printout which summarizes FmHA's calculations.

If you are eligible and pay the recovery value, FmHA will write off the rest of your debt.
If you are eligible to pay the recovery value, FmHA will require you to sign a **recapture agreement.** This agreement would allow FmHA to require you to pay the difference between the recovery value and the current market value of your real estate securing the loan if you sell it within 2 years of the agreement. FmHA can never recapture more than it wrote off.

Time Limit. If you are eligible and want to buy out your loan(s) at the recovery value, **you must pay FmHA within 45 days** from the date you received this letter. You must pay FmHA in cash, money order, or certified check.

If you appeal FmHA's decision, the 45-day period to buy out at recovery value will not start until all of the appeals are completed. Check box #4 on the "Response Form" if you want to buy out at recovery value.

4) Consideration for Homestead Protection and Farmland Leaseback/Buyback.

If you do not appeal, or if you do not win your appeal and you do not buy out the loan at recovery value, FmHA will automatically consider you for Homestead protection and farmland leaseback/buyback. [You applied for these programs when you applied for primary loan servicing (debt restructuring).] FmHA will notify you that it will be considering you for these programs and will request some additional information when the time comes to consider you.

Note to County Supervisor,

[1] Circle appropriate entry.

V. WHAT HAPPENS IF YOU DO NOT RESPOND?

If you do not respond to this letter by completing and returning the enclosed Attachment 6, "Response to Notice of Intent to Accelerate or Continue with Acceleration and Notice of Borrowers' Rights," FmHA will accelerate or continue with acceleration of your FmHA debts. This is very severe action FmHA will take any of the actions listed in Section III above to collect on your debt.

The Right Not to Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract).

You cannot be denied a loan because all or part of your income is from a public assistance program.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

County Supervisor
Farmers Home Administration
United States Department of Agriculture

oOo

Note to County Supervisor:

This attachment will be sent to borrowers who are 180 days delinquent, whose accounts have not been accelerated, WHO DID NOT return attachment 2 of Exhibit A.

See §1951.907(h)(2).

FmHA Instruction 1951-S
Exhibit A to Subpart S
Attachment 9
Page 1

Notification of Intent to Accelerate or Continue Acceleration of Loans and Notice of Your Rights

FmHA will accelerate your loan because you have not asked for primary loan service programs or debt restructuring.

You can:

1) Ask for a meeting with your County Official.
2) Appeal FmHA's decision.
3) Ask to voluntarily sign over to FmHA the property used to secure your loan and ask to be released from your debt.
4) Apply for a leaseback or buyback of your farm real estate once FmHA has taken it.
5) Ask to keep your home after the FmHA has taken it.

FmHA Instruction 1951-S
Exhibit A to Subpart S
Attachment 9
Page 2

Dear (Borrower's Name):

You are behind with your payments to FmHA, and a review of your account shows:

☐ You are $ ____________________ behind in your FmHA loan payments.

This is a violation of your loan agreement.

☐ You have sold or gotten rid of property you used to secure your FmHA loan. You did not get written approval for this.

The property is ____

____

(Describe property.)

☐ You have stopped farming or ranching.

This is a violation of your loan agreement.

☐ You have ____

____

(Insert reason for proposed action.)

FmHA Will Accelerate Your Loans.

This means FmHA will take legal action to collect the money you owe. They will foreclose on real estate and other property used to secure your loans. They may also stop the release of money from the sale of crops or other property. They may take by administrative offset any money you are owed by other Federal agencies.

Steps You Can Take Before FmHA Accelerates or Continues Acceleration of Your Loans.

1) **Right to a meeting.** You have the right to meet with your FmHA County Official before they decide to accelerate or continue acceleration of your loan. You must check the box on Attachment 10 saying you want a meeting. [Attachment 10 is the "Response to Notice of Intent to Accelerate or Continue Acceleration of My Loan."]

   How Soon Must I Ask for a Meeting? You must ask for a meeting within 15 days from the date of this notice. Check the box on Attachment 10. Return it to your County Office. Do this as soon as possible.

2) **The Right to Appeal.** You can ask for an administrative appeal before a hearing officer.
   You can contest FmHA's decision to accelerate or continue acceleration of your loan.
   You can ask for an independent appraisal of the value of your land.
   You will have to pay for this appraisal. FmHA will give you three names of approved appraisers to choose from. Check box 4 if you want an independent appraisal.
   You can ask for an administrative appeal, even if you have asked for a meeting and your problems were not resolved at that meeting.
   You can ask for an appeal even if you do not have a meeting.

How to Ask for an Appeal. Check the box on Attachment 10 and mail it to your County Office within 30 days of getting this notice.

What Happens If You Do Not Respond?
If you do not respond to this notice by filling out Attachment 10, FmHA will accelerate or continue acceleration of any loans. This means they will take legal action to collect the unpaid loan including foreclosure as described above.

NOTE: Foreclosure means you lose the title to your land. *But* you can still apply for preservation loan service programs to keep possession of your house or farm. [See Exhibit A Attachment 1 sent to you on ________________.

If you did not get these forms, contact your County Office *within 15 days* of this notice.]

The Right Not to Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract).

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith.

The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

____

County Supervisor
Farmers Home Administration
U.S. Department of Agriculture

Date: ________________

oOo

QUESTIONS SUBMITTED BY SENATOR THOMAS A. DASCHLE, SUBCOMMITTEE ON AGRICULTURAL CREDIT, DIRECTED TO NEAL SOX JOHNSON, ACTING ADMINISTRATOR, FmHA

1. On April 5, the South Dakota FmHA office received a directive from your office indicating that the variance request relating to conservation easements on inventory land had been granted. This request had been supported by both the Farmers Home Administration and the Fish and Wildlife Service in South Dakota. The variance was the same that North Dakota is currently operating under. It is the middle of May, and the regulations still have not been received by the State offices. Can you please indicate when these regulations will be issued? Secondly, please describe what process FmHA will follow to notify potential buyers of the new regulations?

2. Easements are still being taken on land where there are still borrowers' rights attached. In a letter I received from Secretary Yeutter, on April 12, he indicated that no easements should be taken on this land. He indicated that regulations would be published in the Federal Register. Based on that pledge, I would like to know the timetable for this action. In addition, I would like you to explain what is being done to preserve previous owners right if the land is sold to another buyer because, with the current restrictions, the former owner feels it is not cost-effective to purchase it. Also, is there an ability for farmers to appeal an easement? If there is, I would appreciate if you could explain the appeal procedure.

3. It has come to my attention that you have made some distinct changes in the manner in which you sell inventory land. On April 12, FmHA allowed all family farm borrowers, rather than just FmHA eligible borrowers, to be eligible to purchase inventory land. However, under the law, FmHA is required to grant priority to FmHA eligible borrowers. Under the new regulations, there would be a price floor for entrance, and acceptable bidders would then compete. With these new regulations, small family farmers clearly would not be granted priority as the law states. Under what authority did you issue a directive to make these substantial changes in policy, without first issuing public notice? Also, would you consider rescinding the AN 1903?

4. FmHA has done what many people call "windshield" appraisals (those where the appraiser drives by and does not do a local comparison) which often has resulted in high appraisals. Because of this, borrowers have, under the rules, retained FmHA approved appraisers who have made appraisals and obtained a more realistic figure. However, FmHA in our State is reportedly not using these appraisals in mediation. Instead, they are forcing borrowers to appeal the appraisal, delaying reconciliation of this matter. What is the Department's policy on the use of independent appraisals and how should they be used during mediation? Is there a formal regulation or notice that explains this procedure to County offices? If so, will you provide it for the record.

5. Since many borrowers are concerned about the impact that taxes will have on their restructuring plans, borrowers have written IRS requesting a private letter ruling on how their plan would be taxed. As you know, the response from IRS could take several weeks and even several months. Since both the Federal Government and the borrow benefits if the restructured plan works over the years, I urge you to wait for the responses from IRS rather than going ahead without the borrowers request answered. Is it official FmHA policy to wait for the IRS response, and if so under what conditions?

6. I have attached a letter from Dakota Rural Action, a well respected farm advocacy group in South Dakota. I would like you to respond to the issues raised in this letter and indicate what is being done to resolve the very specific concerns that they raise.

7. Of concern is reported cases where FmHA changed figures without notifying the borrower. In particular, Dan Nelson of Meadow had the very same thing happen to him. I would appreciate if you could comment on his particular case and indicate whether the Department has been contacted about other farmers who have had their plans changed?

8. Regulation 1951.909(e)(1)(xiii)(A) contains a section regarding the interest rates at which the rescheduled loan will be rewritten. The regulation indicates that the lower of the original rate or current rate will be used. What would be the interest rate in the case where the original rate was 13 percent, 4 years ago it was restructured at the then current rate of 8⅝ percent and the current rate is 9.5 percent? Under the regulations would the annual debt repayment actually be increased? What is the current definition of the "original" loan, is it defined through regulations or by law?

[The attached letter from Dakota Rural Action, referred to in question 6, follows:]

DAKOTA RURAL ACTION,
Brookings, SD, May 8, 1989.

Honorable TOM DASCHLE,
U.S. Senate, 317 Hart Office Building, Washington, DC.

DEAR SENATOR DASCHLE: This letter is in regards to the Farmers Home Administration's implementation of the loan servicing and land inventory disposition requirements in the new Agricultural Credit Act of 1987. We ask that you submit this letter so that it becomes part of the record for tomorrow's FmHA oversight hearing, held before the Subcommittee on Agricultural Credit. We urge you and members of the Ag Credit Subcommittee to call on FmHA to solve major problems by promptly changing the interim regulations before these are issued as final regulations, and taking other necessary administrative actions.

This letter is written on behalf of Dakota Rural Action—DRA—a grassroots membership organization of farmers, ranchers, church and small business people who want a voice in public policy decisions affecting their lives. The major objectives of DRA's Fair Credit Campaign are to keep family farmers and ranchers on the land, to ensure that land inventories are returned to family farmers and ranchers, and to ensure that the Government, FmHA, FCS and commercial lenders receive the maximum economic return on their delinquent loans, in other words, restructure debt when this is cheaper to the lender than the cost of foreclosure.

Our Credit Committee, made up of over a dozen households who are borrowers of FmHA, the Farm Credit System and commercial lenders, has spent hundreds of hours reviewing proposed regulations, coordinating borrowers' rights meetings, helping borrowers one-on-one, and meeting with FmHA and State mediation officials to see to it that the act is carried out as Congress intended. Dakota Rural Action has also worked with local churches and State adjudicatories and contact people from the Native American community as part of our public education and outreach efforts.

This work has shown us that there are major problems with the manner in which FmHA is implementing the new Credit Act. These problems will result in more farmers and ranchers being liquidated when it would be cheaper to FmHA to restructure and keep the borrower on the land. This is not what Congress intended, and this situation is unacceptable.

Since the first batch of FmHA debt restructuring notices were sent out in November, we have been contacted for help by over 175 FmHA borrowers, and have provided information to dozens more. We believe that problems are much more widespread then our numbers indicate, because many borrowers do not call, since we have little west river presence, or because borrowers may assume that there is nothing that they can do about an FmHA problem. For every borrower calling us for help, we assume that there are several more experiencing the same problems.

We believe that most of these problems stem from poor or inconsistent procedures used from county to county; lack of clear directive from FmHA's Washington office; or incorrectly written, or unclear interim regulations published on September 14, 1988. We want to avoid further legislation or litigation.

Therefore, we have tried to resolve some of these problems locally by meeting with FmHA and State mediation officials. This list below are what we consider positive actions by FmHA in response to our concerns, and this the result of efforts of DRA members, the help of congressional offices, and the cooperation of the State FmHA Farm Program Director and Mediation Director.

1. The FmHA State office directed county offices to call any borrower receiving exhibit E who was incorrectly referred to mediation (because they had no other creditors), and inform them that they were incorrectly referred, giving them the option to pursue mediation now, or save this right to mediation until other negotiations or appeals failed.

Attachments 1 and 2 are February 24 and February 28, 1989 FmHA directives sent to each county office regarding this. Attachment 3 is a letter sent by the State mediation director to mediators regarding this matter.

Despite this directive, several borrowers were still processed through the State mediation program even though they had no other creditors. In some cases, these borrowers wanted to use the mediation option as a last resort, after local negotiations failed. They were sent through mediation anyway because FmHA County Supervisors and the mediation service failed to alert them to the improper referral. They have now used their right to mediation offered under State law.

2. FmHA's State office has been responsive in urging borrowers to meet with their county offices to negotiate and to understand any changes made to their farm plans, and in the DALR$ printout. One reason for this cooperation, we believe, is because your office urged them to do this. FmHA issued a statewide press release at the beginning of March in response to your request. The release stated that borrowers were encouraged to negotiate with their county offices, outside of mediation.

3. FmHA directed its offices on March 15 to stop the practice of preparing long range plans without input from the borrower (see attachment 4). The directive states "the borrower's input on business adjustments he plans to make may need to be considered." The March 15 directive to county offices also states that "Final numbers to be used in the DALR$ program should be reviewed and understood by the borrower."

In the majority of instances that we have encountered, the borrower is not informed of, or involved in the process of determining which figures should be used in developing a long term plan, and which figures should be used as input to the DALR$ program—unless the borrower has persistently pursued this with the county office. Dozens of borrowers report that their county offices change their farm plans without explanation or justification, then run the DALR$ program and mail it out without any explanation. In many cases, borrowers have worked with the State ag finance counseling services, accountants or attorneys to prepare these plans.

4. FmHA has directed its county offices to stop their practice of inserting subjective, unsubstantiated entries into the borrowers' running records. This directive was included in the March 15 mailing to county offices. We have no reports, since that time, of violations of this directive, though we have several reports of problems up to that time.

5. FmHA has directed its county offices to conduct appraisals with prior notification to the borrower. This is also part of the March 15 mailing to county offices. While we are happy that FmHA is changing its practices for future appraisals, this doesn't solve the problems experienced by dozens of borrowers who were never notified that an appraisal was being done in the current round of restructuring.

6. FmHA's Washington office determined that choices for the list of three independent appraisers were not to include FmHA personnel or contract appraisers unless it was not otherwise possible to find qualified appraisers. This is found in attachment 5. So far, borrowers report no problems with the objectivity of their independent appraiser, but rather, with the lack of consideration that FmHA gives to alternate appraisal information.

7. The FmHA appeals division gave a verbal commitment to Congressman Tim Johnson's office that a borrower could request a different appeals officer if the one assigned had been involved with the borrower's case previously. We are waiting for written confirmation of this. While the appeals division is supposed to be independent, in fact, former FmHA employees are now employed as hearing officers, and some of our members have had hearings with one of these individuals previously. They don't consider this an impartial person, so the appeals division's decision to give borrowers the option to request another hearing officer is much-needed relief. This decision should be written up and sent to all State FmHA offices.

Unless county offices carry out the State directives, the changes are meaningless, and these positive actions pale by comparison to the problems that FmHA has not addressed. Following is a list of these problems, with our recommendations for FmHA action.

A. APPRAISALS

1. FmHA uses comparable sales that aren't comparable (either the type of land isn't the same, the land use is different, the buyer is an investor, absentee landlord or nonfamily farmer) and this is frequently used to determine the net recovery value.

2. FmHA does not take the lower amount of either the comparable sale or the capitalization value of the land, when it determines net recovery value. FmHA's own regulations, pursuant to the Food Security Act of 1985, prohibit them from selling any property priced higher than its productivity value. Yet FmHA does not use this value when it determines net recovery value. This then gives a distorted picture of what the agency could hope to recover if it were to foreclose and then later sell the property. In most instances, the net recovery value is too high.

3. It is unclear whether the capitalization value of the land is accurate, reflective of yields, production costs and commodity prices.

4. FmHA appraisals were done without notice to borrowers; incorrect property was appraised in some instances; property was appraised when it was covered with snow; many "windshield" appraisals have been reported.

A borrower can appeal an appraisal, and present information to show that it was not done right. A borrower can (according to Sox Johnson's April 10th letter to the Ag Credit Subcommittee) register a complaint with the State FmHA Director (with no action specified for the Director to take). A borrower can pay to have an independent appraisal done. If the appraisal was done by the FmHA office (not by a contractor), a borrower can ask the County Supervisor to reconsider the appraisal. (This was a verbal commitment made by FmHA officials at a March 10 meeting with DRA's Credit Committee, but FmHA has not confirmed this commitment in writing.)

DRA's advice to borrowers has been to:

(1) Get a copy of the appraisal;

(2) Find out whether the appraisal was done by the county FmHA office or by a contractor;

(3) Document the method by which the appraisal was done to explain why they believe the appraisal was not conducted properly;

(4) Take the information in to the County Supervisor and request that a new appraisal be done, or that the appraisal information be reconsidered;

(5) If necessary, send any correspondence to congressional delegation for their help; and

(6) Read regulations on appraisals, consult with attorney, determine whether FmHA violated law or regulations in conducting appraisal and take appropriate legal action or appeal.

Unless a borrower has a very competent attorney, they will not be assured that FmHA is correctly conducting and calculating appraisals to accurately project the net recovery value. We have no examples of cases in which we believe FmHA has calculated the net recovery value correctly, because their calculation of appraisals appear to violate the regulations. We have only four examples where borrowers report that the appraisal comes close to reflecting the productivity value of the land, and in those instances, the borrowers say "That's the best that we can get," though they believe that the appraisal is still inaccurate and far above the productivity value of the land. Yet it is the productivity value—nothing more, that FmHA's regulations allow it to recover if they acquired the land and then sold it.

RECOMMENDATIONS

This recommendation has been made by the Farmers' Legal Action Group—FLAG—and we will restate it here:

"FmHA should be required to use the lower of the market value or the capitalization value when determining net recovery value for purposes of debt restructuring. This will allow a more accurate reflection of what FmHA would acquire if the property were foreclosed on and resold.

"A study would be conducted to determine whether FmHA's capitalization formula and capitalization rates accurately reflect what the land will produce by being farmed. This study should include expert appraiser input and review from experts outside FmHA."

DRA recommends that this requirement be spelled out in regulations. The FmHA interim regulations should also spell out the steps that appraisers are to use in conducting appraisals. This should include, at a *minimum,* notification to a borrower before the appraisal is to be conducted, a signed document indicating that the borrower was notified of the appraisal, or a statement explaining why the borrower did not sign the document and a short written description of the collateral that was appraised.

In any instance where a borrower presents written documentation that an appraisal of the security property was done without their knowledge, or was done in a manner that the borrower believes would result in an inaccurate appraisal, the County Supervisor should reconsider the appraisal (or call in the contract appraiser to do the same). If FmHA did not notify the borrower that an appraisal was to have been done, the appraisal should be redone at FmHA's expense if the borrower elects this option.

B. CASH-FLOWS

1. FmHA often changes borrowers' farm plans without telling them, and then runs the DALR$ program. The changes often are not realistic reflections of the borrowers' operations, or often don't fairly project borrowers' long-range plans. It is

almost a futile effort for a borrower to fill out a cash-flow, or to work with an ag finance counselor, or to propose alternatives, because FmHA usually takes the borrowers' proposals and changes them anyway. A clear example of this is Mark Baxter's case, which he described before the Senate Agriculture Committee at the February, 1989 Sioux City hearing. We have dozens of examples like this—in fact, we have very few examples where FmHA works with the borrower on a cash-flow and negotiates on its contents to arrive at a mutually agreeable plan.

2. There are very wide differences between and within county offices in the figures that are used in the farm plan. Many members believe that the merits of a farm plan are less important to FmHA than who you are and how much a borrower threatens bankruptcy. For example, in one county office the staff person accepted a long-range plan submitted by borrower A, which projected reduced capital expenses over the next 5 years than the previous 5 because the borrower had set up a dairy operation and would not need to incur these startup expenses again. Borrower B, whose cash-flow was prepared with the help of a State ag finance counselor, had the same situation but the staff person insisted that the same capital expenditures be used in the borrower's long range plan as were needed to set up a dairy operation. We have dozens of other examples of inconsistent, arbitrary treatment like this, between offices, and within offices.

3. FmHA's commodity price projections are unrealistic. Even borrowers who are now current could expect to go broke using FmHA's projections in their January 27, 1989 AN. FmHA deviates from these figures when they want to, and when they don't, the county personnel say that they are prohibited from using anything but these figures.

RECOMMENDATIONS

We want to restate our original recommendation to FmHA on this matter, which is to ensure that each borrower knows each figure that FmHA uses in the cash-flow, before the DALR$ program is run. If there are differences between FmHA's farm plan and the borrower's submission, each and every one of these should be discussed between the borrower and FmHA—outside of mediation, outside of appeals, as a normal part of the debt restructuring procedures. FmHA should consider a borrower's alternatives and discuss these, provided that the borrower is presenting supporting documentation to justify the proposed farm plan. FmHA is failing at this now. We also endorse FLAG's recommendation that a study be conducted to determine whether price projections were based on accurate data.

C. DALR$/NET RECOVERY VALUE CALCULATION

1. Because there are so many problems with FmHA appraisals and cash-flows, it is unlikely that reasonable, accurate information is used as input to the DALR$ program to begin with. Until those problems are corrected, we do not expect the DALR$ program to work fairly. DALR$ will frequently find less than $500 difference between recovery value and the value of the restructured loan—every and anything counts in making accurate calculations.

2. Nobody knows how DALR$ works because the program is not accessible, and so nobody can really verify whether the calculation is accurate.

3. Few farmers are told why the DALR$ program computed what it did, unless they persistently go to their county office to get explanations.

4. Some county offices are willing to deviate from the DALR$ printout in negotiating settlements with farmers, and others stick rigidly to the determination on the printout.

5. FmHA does not consider the fact that thousands of acres of land may be subject to restrictive U.S. Fish and Wildlife Service easements, which, if placed on land once it enters FmHA inventory, will greatly reduce the productivity value of the land, greatly reduce its resale value, and greatly reduce the amount that FmHA could hope to recover if it were to foreclose. So widespread is this that in some counties, upwards of 75 percent of FmHA inventory ground is subject to conservation easements. Tom Bower, South Dakota State farm program director informed DRA that the agency (or USFWS—we aren't sure who has final authority here) would be considering land for easements the minute that the land entered FmHA's inventory. He also acknowledged that FmHA does not now calculate the loss that they would experience if an easement were placed on the land, though this would greatly change the net recovery value calculation. And finally, he said that they are not doing anything about this. This means that many borrowers are negotiating settlements now, or going through recovery buyout, while FmHA knows that they may

have no hope of selling the land at the price used in the DALR$ program. This is clearly a violation of the Credit Act.

RECOMMENDATIONS

1. We reiterate the need for county offices to review the DALR$ program thoroughly with borrowers. FmHA should rerun the DALR$ program anytime that one or more changes are made to a borrower's cash-flow. FmHA should make this information available consistently to borrowers, attorneys and ag finance counselors throughout the negotiation process, before mediation, during mediation, as part of the informal conference, appeals, etc.

2. FmHA must take into consideration the presence of wetlands, flood plains and/or highly erodible land that would be covered by a conservation easement if the property were foreclosed on and became part of FmHA's inventory. Every borrower should have a chance to have new calculations of net recovery value made on his/her loan if the land has the potential of having a conservation easement placed on it.

D. RIGHT OF FIRST REFUSAL/CONSERVATION EASEMENTS

1. FmHA is not giving previous owners of farmland, or their families, the right of first refusal. Simply put, the agency's regulations appear to violate the Credit Act, and in South Dakota, the arbitrary manner in which inventories are handled compound the confusion. It appears that counties aren't following the regulations anyway. Here are some examples:

FARM FAMILY A

Farm Family A, in Deuel County, lost their farm in 1987 and have been consistently told that they do not have a right of first refusal because they exercise a lease/option (1 year) in 1987. It didn't matter to FmHA that they could have, at that time, offered the borrower up to 5 years—it was their policy not to do this. The borrower took what they could get at that time. Now, with the passage of the Credit Act, the borrower has asked for a chance to buy back the land, and the family has been working for 2 years to acquire the homestead. FmHA has said that they don't have a right of first refusal to the land because they signed the lease before the Credit Act passed, but FmHA is allowing the homestead provisions of the new Credit Act to apply. The land was, for a few weeks, slated to be deeded to USFWS, so in April, the farmer sold equipment, and made plans not to farm in 1989. A few days before farm program signup deadline, USFWS or FmHA (whoever makes final decisions) decided not to deed the land to USFWS, and the family was told that they could farm the land for another year. The farm family still does not have the right to buy the land.

FARM FAMILY B

Farm Family B, in Miner County, also lost their farm to FmHA in 1987. Today, they have a 5-year lease with the option to buy, which was just granted in April—a result of an out-of-the-blue decision by FmHA at the last minute. For crop-year 1989, the land will not have a restrictive USFWS easement on it, but in subsequent crop-years it may. FmHA had already told the farmer that they couldn't get the land back through first refusal because the farmer had exercised a lease on the land after losing the farm. But they changed their mind this year by giving the farmer a 5-year lease/option. Why did farmer B get a lease/option after having been told he had no right of first refusal, when farmer A gets no first refusal? They both lost their land more than 180 days prior to January 6, 1988.

FARM FAMILY C

Farm Family C, also in Miner County, also lost their farm to FmHA before the Credit Act's enactment. They also were told that they could not get it back. Instead, a restrictive USFWS easement was placed on much of the land, one that also impedes the conservation operation of the adjacent landowner. The previous owner has a 1 year lease on the land but wants it back to buy, without the restrictive easement on it. Why did farmer C not get a 5-year lease/option?

FARM FAMILY D

Farm Family D, in Douglas County, is trying to get their father's land out of FmHA inventory. This family is succeeding in getting FmHA to honor homestead protection rights in the Credit Act, and is making progress, with the help of Congressman Johnson's office, in getting part of the land back from FmHA. FmHA has ignored the first refusal rights of the previous owner and previous owner's family, in this case. Why is FmHA willing, here, to negotiate with congressional pressure?

These are only four examples—we have more. Each example illustrates that FmHA does not honor first refusal rights as spelled out in the Credit Act. The examples also show that the counties are not even sticking to the FmHA procedure, because they end up, in some instances, offering first refusal rights after telling the previous owner that they didn't have any. And in other instances, FmHA negotiates subject to pressure.

2. In several instances, USFWS easements are placed on inventory ground without first refusal rights extinguished. FmHA has told DRA that they don't have any choice—if USFWS recommends it, then they have to place the easement on the land. USFWS tells us that they don't know which agency has final authority over the placement of an easement on the land. The interim regulations tell us that FmHA is to first certify that first refusal rights have been extinguished. FmHA seems to be doing this by pointing to a lease signed prior to the enactment of the Credit Act. We do not need to elaborate on the problems and inconsistencies with FmHA's and USFWS's handling of these easements, because of the extensive work done by your office to solve some of these problems. We believe that much of this could be avoided if FmHA were to honor first refusal rights as the law intended.

3. As FmHA borrowers negotiate preservation loan servicing, they do so without knowledge that conservation easements may be placed on their land, reducing the value of the land and the ability of the producer to farm the land. In fact, we know of no borrower who has been alerted to this by FmHA.

RECOMMENDATIONS

1. FmHA should halt any land sale of FmHA inventory ground until such time as clear regulations and procedures are established which would ensure that FmHA is, in writing, extending first refusal rights to previous owners and previous owners' families, as the law requires. Until this is done, no USFWS easement should be placed on any inventory ground.

2. We wish to restate FLAG's suggestions on preservation loan servicing and easements which would require FmHA to consider—before a borrower opts for preservation loan servicing and waives their right under primary loan servicing—whether there are wetlands, flood plains or highly erodible lands on which FmHA must grant a conservation easement. All the ramifications of this easement should be assessed and spelled out to the borrower before any final decision is made.

3. Before any easement is placed on the land, FmHA should first ensure that affected adjacent landowners are contacted and informed of the easement, and the agency should also contact local officials so that they can comply with zoning ordinances, and assess the tax impact of these easements.

E. MEDIATION

1. FmHA does, in some cases, negotiate in mediation, taking into consideration borrower's proposals and discussing them openly. In other instances, however, FmHA does not consider appraisals or other information in mediation. Attorney Rolland Samp has sent you letters regarding this matter. His recommendation, which we endorse, is to require FmHA to negotiate in mediation in good faith.

DRA requested that the State mediation service hold back the mediation release from FmHA in instances where the agency refused to negotiate. If borrowers do not negotiate in good faith in mediation, a release is issued and they effectively waive their rights. We have no problem with this, but disagree with the lack of consequence to FmHA for not acting in good faith. Pointing to the State regulations, which define the conduct of all parties in mediation, and the State law, which uses a mediation release as the instrument needed by a creditor before debt collection action can ensue, we believed that it was realistic, and within the scope of the State law, to deny the issuance of a mediation release until FmHA has responded to a borrower's proposals. The mediation service denied this request because they felt that they did not have the authority under State law to do this, and instead said that they would instruct the mediators to ask FmHA to respond to borrowers' proposals in mediation.

While we disagree that the State has no authority, and believe that they could ensure a more meaningful program if the scales were balanced, it ultimately is FmHA's problem for not negotiating in good faith. Since some borrowers report that some counties have been willing to negotiate in mediation, we believe that all should.

RECOMMENDATIONS

1. FmHA should be required to negotiate in good faith in mediation, and the regulations or an Administrative Notice should be issued which details this obligation.

2. Any State mediation program currently getting Federal matching funds should be subject to review of the number of cases where no agreement was reached because the creditor failed to negotiate in good faith. State programs should not get further Federal funding until such time as they demonstrate consequences to creditors and borrowers—balanced—for failure to negotiate in good faith.

We believe that unless FmHA State and county offices consistently carry out the Credit Act as Congress intended, there will be more farm failures, more legal actions, more loss to the taxpayers, and ultimately, fewer farmers and ranchers in South Dakota. Your continued intervention is very much appreciated.

Sincerely,

THERESA M. KEAVENY,
Staff Director.

Enclosures.

[Attachment 1]

U.S. DEPARTMENT OF AGRICULTURE,
FARMERS HOME ADMINISTRATION,
Huron, SD, February 24, 1989.

Subject: Mediation sessions.

To: All county offices and district offices.

On February 23, 1989, we met with persons involved with the State's Mediation Program including three of the State's Ag Counselors. Several issues were discussed which prompts the following remarks:

1. Being able to resolve 1951-S Servicing without mediation is a benefit to all concerned, including FmHA. We are not restricted from negotiating a feasible plan with a borrower between the time exhibit E is sent and mediation is actually held. If negotiations are requested by the debtor, FmHA personnel should schedule such as their schedule permits. We realize such negotiations may not always be possible due to scheduling, but such action should not be dismissed if it could possibly avoid mediation.

2. The State will be scheduling mediation sessions once mediation requests are received. We are expected to meet their schedule. If a County Supervisor is being scheduled too tight, he should contact the State Mediation Director and advise him of the problem. They will not be able to reschedule those that are already set up, but can adjust future scheduling to accommodate us.

3. Please note that all parties participating in mediation will pay $25 per hour, including borrowers.

4. Although the State law only concerns creditors with debts of $50,000 or more, FmHA's needs for mediation under 1951-S concerns debts of any size that can be negotiated in an effort to create a feasible plan. You should continue to list the names and addresses of all creditors on the reverse of the State's Mandatory Mediation request form.

5. SD AN 596 (1951) regarding mediation reminds you that DALR$ input items such as balance available and security values may be negotiable in mediation. Other issues such as voluntary liquidation arrangements may also be negotiated.

6. We have had contacts regarding FmHA collateral values, either set by FmHA employees or contractors. Some contacts feel our values are too low and some too high. We want to remind you that the values set for 1951-S Servicing should be true estimates of value based on current economic conditions and comparable sales. We must expect them to be realistic and supported by fact. For example, 100 cows in an average herd of 100 would not all be worth the present top dollar being paid for beef cows since an average herd is made up of cows with a range of ages, quality and condition. Remember appraisals are appealable and can be negotiated in or out of mediation.

THOMAS J. KOSTEL,
Acting State Director.

[Attachment 2]

U.S. DEPARTMENT OF AGRICULTURE,
FARMERS HOME ADMINISTRATION,
February 28, 1989.

Subject: 1951-S Servicing.

To: All county offices and district offices.

1. We realize that exhibit E's requesting mediation have on occasion been sent to borrowers who do not meet the requirements set out on page 33 of FmHA Inst. 1951-S (perhaps they have no other creditors or debts owed other creditors are so insignificant their negotiation could in no way assist in developing a feasible plan). Realizing this and the mixed signals this has created for borrowers, we require that the following be done IMMEDIATELY:

1. Reexamine all cases that were sent exhibit E to determine whether or not they meet the requirements for mediation (page 33 1951-S).

2. Contact those persons who do not ask them to decide whether or not they desire to proceed with mediation at this time, or if they would like this mediation session CANCELED and rights preserved for a later date if necessary. We suggest this contact be made by phone confirmed in writing. A decision regarding this must be made prior to the mediation session. Since FmHA had requested the mediation, we will pay the $25 fee regardless of whether or not it is canceled.

We suggest the State be notified by phone at 773-5841 and confirmed by a letter.

The same routine of cancellation will appy if a feasible plan is developed by negotiation prior to the mediation session.

NOTE: The State cannot put mediation on hold. It must be held or canceled. If mediation is canceled, then attachments 5 and 6 or exhibit F would be sent, as appropriate. The SENT program would need to be edited to accommodate this.

2. The largest complaint we have received from outside contacts is a public perception in some areas that FmHA personnel are so busy with the 60-day time limits that they are not willing to counsel or negotiate with borrowers in attempting to develop a feasible plan for loan servicing. Every effort must be made to change that perception. We must take advantage of borrower attempts to create a feasible plan when possible so mediation will not need to be requested or can be canceled if already set. The people involved with State mediation agree that mediation can be canceled by the requester any time prior to the first meeting preserving the borrowers' rights to mediation later on if necessary.

3. County Supervisors are reminded to be careful in advising borrowers of the impact of shared appreciation agreements until section 1951.914 of FmHA Inst. 1951-S has been reviewed. Note particularly that real estate appreciation is to be shared at the end of 10 years irregardless of whether or not the property is sold.

4. The required annual Limited Resource review can be completed simultaneously with considering 1951-S servicing requests but must be properly documented in the running record. Clerical personnel can then enter the required 8M transaction using ADPS.

5. When updating servicing for borrowers in the SENT program in the "180 days delinquent" category, the program "drops" the borrower from the system after send exhibit F and attachment 1 has been completed with an outcome code 1—yes documents were sent. When choosing the outcome code for this activity (send exhibit A and attachment 1) choose the other outcome and the other code to use is CWC002 (00=zeros). This will take you to the "waiting on certified mail" activity. If the borrower has been dropped from the system, he must be reinitialized and all activities must input again.

6. It has been asked what type of notice is to go to a borrower who requests only a meeting on attachment 6. We feel this parallel's the question answered on page 9 No. 27 of National questions and answers sent to the field by the State office on January 5, 1989. B-3 as mentioned has been revised and is attached to AN 1853 (1951) for use. Naturally if the decision is changed at the meeting, the appropriate attachment to mail is F.

7. The National Office now advises us that a new DALR$ will be run effective the date loan servicing actions are to be closed. The interest rates used, however, do not need to be changed from the rates set when the first DALR$ was run and the decision made. Interest accruals resulting in increased debt write-down do not require additional approval from the State Director if done in a reasonable timeframe. The

National Office states this will be set out by AN. For closings taking place now, no additional approval is needed.

THOMAS J. KOSTEL,
Acting State Director.

[Attachment 3]

SD FARM LOAN MEDIATION SERVICES NEWSLETTER

[Vol. 2 No. 2, March 1989]

This letter will be mainly on the subject of working with the FmHA in mediation. But, before I start that let me say how we appreciate the work you did on getting the bill passed that limits your personal liability. More than anything else I believe it showed the broad base of support we have throughout the legislature for solving disputes, especially in the area of farm loans, by mediation rather than litigation. We will be looking into the possibility of the purchase of group insurance to provide further coverage for you but we will discuss that when we have more information.

* * * * * * *

During February we received 317 requests for mediation. All but a handful were from the Farmers Home Administration. These are not, as we originally thought, applications that are on debtors who did not return their restructure forms. These applications are on debtors who did comply with all the restructure material but do not qualify for Loan Servicing. Please refer to "Restructuring Game Plan" that I sent to you previously. Look at Box 7B then go to Box 8A and 8B. You see now that these are people who did not qualify for debt servicing but who have other creditors.

I am including with this newsletter copies of two letters sent to the FmHA County Supervisors by Mr. Tom Bauer, Head of the Farmer Programs for the State FmHA. I tell you all this and send you this because I want you to be aware that there is a lot of discussion between our office, the State FmHA office, farmers and farm organizations as well as the congressional delegation. I assure you that to this point there has been very good cooperation between our program and the FmHA. So, don't take anything I say to mean otherwise.

The situation is this: as the FmHA County Supervisors worked to meet their 60-day constraints on getting back to the borrowers on the result of the DALR$ program they did not have all kinds of time to make judgment calls. If the program said the borrower was not eligible for loan servicing and if there were other creditors the Supervisor sent them to mediation. Depending on numerous facts, it may or may not have been the most advantageous thing to do for the borrower or FmHA. I am getting many calls every day from farmers wanting to be in appeal and save their rights to mediation in case foreclosure becomes part of their future. You may have to deal with this problem in mediation in case the debtor and FmHA have not solved that problem before then.

Please read the letters Mr. Bauer (they are actually signed by Tom Kostel) sent to his staff and if you have questions please call me.

We should not treat a mediation case where the requesting creditor is the FmHA any different than any other case. However, remain aware these are people who have had chronic financial difficulties for years and finally these problems are coming to a head. But these creditors have all the rights under the South Dakota Mediation Law that any other creditor has.

* * * * * * *

I am finding it a new experience to be scheduling you on such a tight schedule. If you end up at two places at the same time let me know immediately! If you get to where your meeting is scheduled and some problem with the facility develops or if you find it locked and need a key always check with the County Extension Office.

* * * * * * *

Last Thursday Randy England and three of his Credit Counselors and myself met with the FmHA to discuss some of our joint concerns in keeping all programs running smoothly. This communication will continue so as you get into your sessions and you find concerns feel free to call. On Saturday, March 4, I am scheduled to be on a panel at a West River Mental Health Seminar for farmers and ranchers and on Friday, March 10, I will be in Watertown for a meeting of the Credit Committee of Dakota Rural Action.

* * * * * * *

"Every man has a right to his opinion, but no man has a right to be wrong in his facts."——Bernard Baruch

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[Attachment 4]

[Msg: DGIJ-2770-3344]

DAKOTA RURAL ACTION,
March 15, 1989.

From: Dir. SD.
To: SD. Counties, SD. Districts.
Subject: 1951-S Servicing.

Following a flurry of messages, we hope it is now clear that we are to follow the guidance in National AN 1876 (1951) dated March 6, 1989, for notifying borrowers who have not returned sufficient information to complete primary servicing applications. It is our opinion that those cases we may have earlier concluded with incorrect attachments need not receive additional mailings. We earlier felt it inappropriate to send those cases the guide letter attached to 1876, but we now ask that you disregard that advice. We sincerely hope this issue can be put to rest.

Servicing of delinquent borrowers who are less than 180 days delinquent is covered by section 1951.907(e) on page 12 of FmHA Instruction 1951-S. We recognize that section provides some confusing reading. It is suggested that these borrowers be provided with attachment 1 of exhibit A to 1951-S. Application material must be provided by the borrower before primary loan servicing can be concluded, although no timeframes for processing apply to this borrower (see question 8, page 6 of National questions and answers sent out on January 3, 1989). We have inquired of the national office regarding the steps to follow if such a borrower requests primary servicing and does not qualify, but so far, they have not responded. We do know that attachments 5 and 6 would not be appropriate.

Current borrowers may also apply for primary loan servicing. An example recently brought up was a current borrower requesting operating credit. The Farm Plan was not feasible due to balloon installments coming due on FmHA loans at the end of the year. In that case, it is certainly appropriate to consider primary servicing at this time in an attempt to create a feasible plan. Although this situation is not covered in 1951-S, it would seem appropriate that we provide this borrower with attachment 1 of exhibit A in this case. If a feasible plan cannot be developed considering primary servicing, we would be denying the loan and informing the borrower of his appeal rights by following the directions in FmHA Instruction 1900-B.

Members of Dakota Rural Action recently brought up several issues regarding FmHA's handling of 1951-S Servicing:

Appraisal work has been completed without any notice to the borrower or attempt to arrange an appointment for that purpose, either by FmHA or contract appraisers. Such effort is common courtesy and necessary to keep the borrower informed of what we are doing regarding his account.

Borrowers receive a copy of their DALR$ program, but may have not been informed of the input data, since changes were made to the plan and DALR$ was run after the borrower left the office. Final numbers to be used in the DALR$ program should be reviewed and understood by the borrower.

Perceived by some that FmHA is incorrectly using borrower history in developing 1989 plans. Some say they are not allowed to use history of calf weights that may support sale of calves that exceed 400 pounds, but are required to use $362 per head (South Dakota AN 618 (1924)). It is not the intent that the Farm Plan price guidelines be that restrictive. It is our opinion that we are to rely on the borrower's production history, but use prices established for use, unless farmers have proven accurate records to support a premium price for commodity and/or contracts with well established markets.

In many cases, long time plans were prepared by the supervisor with no input from the borrower. Although price and expense adjustments are dictated to us, the borrower's input on business adjustments he plans to make may need to be considered.

Again, running record documentation that is critical of the borrower is to be discussed. It is important that running record entries be clear, concise and factual. They should not be editorials. We must be careful of stating opinions in the running record.

Public reception and public perception of what we are doing is always important. The way we treat our borrowers and keep them informed of the steps we are taking at servicing their accounts will, for the most part, be the keys to our success or failure in this area. We realize that not all of the general public or our caseload agrees with the servicing we are offering under 1951-S, but those default cases who are offered rights under the Agricultural Credit Act and FmHA Instruction 1951-S deserve impartial and professional treatment in accordance with our authorities.

THOMAS J. KOSTEL,
Acting State Director.

[Attachment 5]

U.S. DEPARTMENT OF AGRICULTURE,
FARMERS HOME ADMINISTRATION,
Huron, SD, May 8, 1989.

Dakota Rural Action,
Box 549, Brookings, SD.

DEAR SIRS: Enclosed is a letter from our National Office responding to Questions No. 1 and No. 3 of your letter dated March 24, 1989.

Our records reflect earlier response to you on Questions No. 2, No. 4 and No. 5.

Your letter of March 24, 1989, indicated No. 6 was to be addressed later, Item No. 7 was to be referred to Mr. Stone and Item No. 8 was to be looked into by Congressman Johnson's staff.

THOMAS J. KOSTEL,
Acting State Director.

Enclosure.

U.S. DEPARTMENT OF AGRICULTURE,
FARMERS HOME ADMINISTRATION,
Washington, DC, April 20, 1989.

Subject: Concerns of "Dakota Rural Action."

To: Thomas J. Kostel, Acting State Director, FmHA, Huron, SD.

Your memorandum dated April 4, 1989, asked us to respond to issues numbered 1 and 3 in the "Dakota Rural Action" (DRA) letter dated March 24, 1989.

Issue 1. Provide copies of the appraisal to each borrower when each DALR$ printout is given to the borrower.

Response. The DALR$ printout contains the appraisal value of the property. If the borrower has any questions about the appraisal, a copy is readily available upon request. We do not believe it is necessary to routinely provide a copy of the appraisal to the borrower.

Issue 3. The list of appraisers furnished the borrower should not include contract appraisers used by Farmers Home Administration (FmHA).

Response. We have stated in our FmHA training meetings and our questions and answers that if other independent appraisers are available we should not include the names of contract appraisers. However, in some areas of the country it is difficult to find enough qualified appraisers for the list, making it necessary to add contract appraiser names to the list. We certainly should provide the borrower with a list that contains the names of other than contract appraisers whenever possible.

GLENN J. HERTZLER, JR.,
Assistant Administrator Farmer Programs.

CONCERNS OF "DAKOTA RURAL ACTION"

HURON, SD, APRIL 4, 1989.

Administrator, FmHA.
Attn: Farmer Program Loan Servicing Division,
Washington, DC.

The Chief of Farmer Programs on my staff recently agreed to meet with the Finance Committee of "Dakota Rural Action" for the purpose of discussing concerns regarding FmHA's loan servicing programs. "Dakota Rural Action" is an organization of persons dedicated to concerns affecting farmers and their membership includes FmHA borrowers, many experiencing severe financial difficulties.

Enclosed is a copy of a March 24, 1989, letter to us from "DRA" which is a synopses of the issues discussed at that meeting. Although some of the items discussed concern public relations issues within the control and responsibility of FmHA in South Dakota, specifically other issues touched on procedural requirements that we feel need to be addressed by the National Office.

Please note that it is our opinion that issues numbered 1 and 3 must be addressed by the National Office. Our interpretation of those concerns is as follows:

1. "DRA" believes the procedural notification process should require that appraisals be automatically provided to borrowers along with the DALR$ printout. At present, copies of appraisals can be provided under the Freedom of Information Act procedures.

3. The basis for the concern in Item No. 3 centers around the definition of the word "independent." "DRA" has stated that they feel an independent appraiser should not be someone who has also serviced as a contract appraiser for FmHA. Please note the response to Question No. 19 on page 21 of the National Office Questions and Answers received in December of 1988.

We ask for your timely response so we may pass that onto this organization as has been requested.

THOMAS J. KOSTEL,
Acting State Director.

Enclosure.—Does not appear in the printed hearing record.

U.S. DEPARTMENT OF AGRICULTURE,
FARMERS HOME ADMINISTRATION,
Washington, DC, April 20, 1989.

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To: Thomas J. Kostel, Acting State Director, FmHA, Huron, SD.

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GLENN J. HERTZLER, JR.,
Assistant Administrator Farmer Programs.

ANSWERS FROM FARMERS HOME ADMINISTRATION TO QUESTIONS FROM SENATOR DASCHLE

Question 1. On April 5, the South Dakota FmHA office received a directive from your office indicating that the variance request relating to conservation easements on inventory land had been granted. This request had been supported by both the

Farmers Home Administration and the Fish and Wildlife Service in South Dakota. The variance was the same that North Dakota is currently operating under. It is the middle of May, and the regulations still have not been received by the State offices. Can you please indicate when these regulations will be issued? Secondly, please describe what process FmHA will follow to notify potential buyers of the new regulations?

Answer. Variances to conservation easement requirements on inventory property have been granted to both North Dakota and South Dakota. These two States are currently operating under revised guidelines and conservation easement requirements. We do not intend to issue revised regulations to address those variances that were granted to North Dakota and South Dakota. Current guidelines to the field advise that individual States may request variances to the conservation easement requirements. It is our intent to address individual State requests for variances to the conservation easements on a case by case basis. We do not intend to notify potential real estate buyers of the variances we have granted because the type and extent of the conservation easement is determined on a case by case basis by FmHA and the U.S. Fish and Wildlife Service prior to offering the property to the prospective purchaser(s). However, prospective purchasers will be made aware of any deed restrictions that will be placed on the property.

Question 2. Easements are still being taken on land where there are still borrowers' rights attached. In a letter I received from Secretary Yeutter, on April 12, he indicated that no easements should be taken on this land. He indicated that regulations would be published in the Federal Register. (A) Based on the pledge, I would like to know the timetable for this action. In addition, I would like you to explain what is being done to preserve previous owners right if the land is sold to another buyer because the current restrictions, the former owner feels it is not cost-effective to purchase it. (B) Also, is there an ability for farmers to appeal an easement? If there is, I would appreciate if you could explain the appeal procedure.

Answer. (A) FmHA is drafting regulations that will propose changes to existing regulations and permit the former owner an option to lease or purchase the property without deed restrictions, except regarding natural wetlands which has never been farmed. We expect the proposed rule will be published in July 1989, with a 60-day comment period. The date of the final rule will depend on the number and nature of the comments the Agency receives but we anticipate a final rule may be published in December 1989. We do not intend to suspend sales of real estate to former owners during the regulation revision period. Therefore, transfers to former owners will require deed restrictions where applicable. We believe many former owners will elect to lease the property for 5 years and delay the purchase until a later date. If borrowers do not elect to lease or purchase the property, they forfeit those rights and the new purchaser will have to accept the property with the required restrictions.

(B) If a borrower does not agree with the proposed deed restriction on the inventory farm, there is an opportunity to negotiate the conditions of the restrictions with the U.S. Fish and Wildlife Service (FWS) and Farmers Home Administration (FmHA).

Reviews of deed restrictions by FmHA and FWS would be handled on an individual case by case basis and not as a part of FmHA Instruction 1900–B, "Appeal Process."

Question 3. It has come to my attention that you have made some distinct changes in the manner in which you sell inventory land. On April 12, FmHA allowed all family farm borrowers, rather than just FmHA eligible borrowers, to be eligible to purchase inventory land. However, under the law, FmHA is required to grant priority to FmHA eligible borrowers. Under the new regulations, there would be a price floor for entrance, and acceptable bidders would then compete. With these new regulations, small family farmers clearly would not be granted priority as the law states. Under what authority did you issue a directive to make these substantial changes in policy, without first issuing public notice? Also, would you consider rescinding the AN 1903?

Answer. Administrative Notice 1903 dated April 12, 1989, regarding the sale of inventory property to the highest bidder, eligible for FmHA credit, has been rescinded.

Question 4. FmHA has done what many people call "windshield" appraisals (those where the appraiser drives by and does not do a local comparison) which often has resulted in high appraisals. Because of this, borrowers have, under the rules, retained FmHA approved appraisers who have made appraisals and obtained a more realistic figure. However, FmHA in our State is reportedly not using these appraisals in mediation. Instead, they are forcing borrowers to appeal the appraisal, delaying reconciliation of this matter. What is the Department's policy on the use of independent appraisals and how should they be used during mediation? Is there a formal regulation or notice that explains this procedure to County offices? If so, will you provide it for the record?

Answer. FmHA regulations require an inspection of the property. If you know of specific cases where "windshield" appraisals were done we would appreciate information that will let us investigate and stop such practices. FmHA appraisals are to be based on three approaches in determining a Recommended Market Value. The approaches are:

1. Market Data Approach or Comparable Sales;
2. Capitalization; and
3. Summation Value of Land and Improvements.

Borrowers who disagree with the values established by FmHA Designated or Contract appraisers, may appeal. The appeal hearing officer is able to furnish the borrower with a list of three FmHA approved appraisers who may be employed by the borrower to furnish an appraisal, independent of the FmHA appraisal. The appraisal deemed properly documented and most reflective of the current property value as determined by the appeals hearing officer is the appraisal FmHA is required to use. As requested, attached is a copy of the FmHA Instructions concerning this issue.

FmHA will consider all information presented at mediation including appraisals, made by qualified appraisers, which are presented by borrowers or other creditors. Disputes of appraisals not resolved in the mediation process may be appealed in the FmHA appeal process.

Question 5. Since many borrowers are concerned about the impact that taxes will have on their restructuring plans, borrowers have written IRS requesting a private letter ruling on how their plan would be taxed. As you know, the response from IRS could take several weeks and even several months. Since both the Federal Government and the borrower benefits if the restructured plan works over the years, I urge you to wait for the responses from IRS rather than going ahead without the borrowers request answered. Is it official FmHA policy to wait for the IRS response, and if so under what conditions?

Answer. FmHA does not have the discretion to wait for an Internal Revenue Service (IRS) response concerning the impact that taxes will have on FmHA borrowers restructuring plans. The Agricultural Credit Act of 1987 requires FmHA to determine the borrower's eligibility for restructuring within 60 days after receipt of a written request. IRS has provided an informal opinion on this issue. We would gladly share this with borrowers. It clearly points out that these decisions will have to be made on an individual basis. FmHA is not in a position to advise on tax matters. The notice to borrowers of FmHA's offer to restructure their debt provides a notice that they may wish to consult a tax expert to determine tax liability that may result from debt write-down.

Question 6. I have attached a letter from Dakota Rural Action, a well respected farm advocacy group in South Dakota. I would like you to respond to the issues raised in this letter and indicate what is being done to resolve the very specific concerns that they raise.

[Attached are answers to question 6, parts A, B, C, D, and E:]

DAKOTA RURAL ACTION

QUESTION A

Question 1. FmHA uses comparable sales that aren't comparable (either the type of land isn't the same, the land use is different, the buyer is an investor, absentee landlord or nonfamily farmer) and this is frequently used to determine the net recovery value.

Question 2. FmHA does not take the lower amount of either the comparable sale or the capitalization value of the land, when it determines net recovery value. FmHA's own regulations, pursuant to the Food Security Act of 1985, prohibit them from selling any property priced higher than its productivity value. Yet FmHA does not use this value when it determines net recovery value. This then gives a distorted picture of what the agency could hope to recover if it were to foreclose and then later sell the property. In most instances, the net recovery value is too high.

Question 3. It is unclear whether the capitalization value of the land is accurate, reflective of yields, production costs and commodity prices.

Question 4. FmHA appraisals were done without notice to borrowers; incorrect property was appraised in some instances; property was appraised when it was covered with snow; many "windshield" appraisals have been reported.

Answer. FmHA uses acceptable industry standards in determining the "Market Data Approach" by the use of sales of comparable properties. The comparable sales used should be recent and as nearly similar as possible to the subject property. If there is a lack of similarity between the property being appraised and the properties whose sales data is being used, appropriate compensating adjustments are to be made based on other factual data. If the differences are numerous or pronounced, sales data on more nearly comparable property should be selected. Property selected for comparative purposes should include those in which the terms and conditions of the sale are representative of true sale transaction occurring in the community. FmHA does not separate and isolate one of the three appraisal approaches in determining the current appraised value as required by section 353(c)(2)(A) of the Agricultural Credit Act of 1987. The current appraised value is determined by the appraiser considering the (1) Market Data Approach, (2) Capitalization approach and (3) Summation approach. FmHA, therefore, does consider the Capitalization Value in meeting the requirements of the act in arriving at the current appraisal value. This is in accordance with acceptable industry standards.

The FmHA appraiser attempts to find the value of property based on fact. In determining the earning ability of a farm, an FmHA appraiser must assume that:

(a) The farm will be operated by a typical operator for the area;

(b) The cropping system used is typical for the farm under consideration and will maintain the anticipated productivity;

(c) Crop yields used for the farm under consideration are representative of yields generally being obtained in the area; and

(d) Approved commodity prices and farm expenses are employed in estimating net income.

All FmHA certified and Contract Appraisers are required to do onsite inspections of the properties appraised. The appraiser is required to obtain a legal description, map of the property and related soil information. This assists the appraiser in determining the boundary locations and productive capacity of the property. We are not aware of any appraisal made on incorrect property or property covered with snow. If you have specific instances, we would welcome the opportunity to look into what may be improper appraisals. Borrowers are normally notified, since the appraiser must visually inspect the farm and each of the farm buildings including the dwelling: and therefore, arrangements for entry must be made with the owner/occupant.

B. Cash-Flows

Question 1. FmHA often changes borrowers' farm plans without telling them, and then runs the DALR$ program. The changes often are not realistic reflections of borrowers' operations or often don't fairly project borrowers' long range plans. It is almost a futile effort for a borrower to fill out a cash-flow, or work with an ag finance counselor, or to propose alternatives, because FmHA usually takes the borrower's proposals and changes them anyway. A clear example of this is Mark Baxter's case, which he described before the Senate Agriculture Committee at the February 1989, Sioux City hearing. We have dozens of examples like this—in fact, we have very few examples where FmHA works with the borrower on a cash-flow and negotiates on its content to arrive at a mutually agreeable plan.

Answer. FmHA regulations require that projected plans of operation be based on the farmer's actual 5-year history of production, income and expenses. Those farmers operating in a natural disaster designated area are authorized to use County or State average yields (if higher than the farmer's actual yields) for those years their production was affected by the disaster. Unit prices for all commodities produced commercially in each State are established by the FmHA State Director and made available to the County Offices annually to be used in developing projected plans of operation. In some situations, farmers develop their own plans of operation using inputs that differ significantly from their known history of performance. In such cases, if the farmer is not agreeable to revisions which would bring projections in line with past performance, the FmHA County Supervisor has no alternative but to reject the application or develop an FmHA plan of operation based on realistic verifiable inputs. In the majority of cases, the County Supervisor and the farmer do develop a mutually agreeable plan of operation.

We have been advised by our South Dakota FmHA State Office that FmHA did not change any figures on Mr. Mark Baxter's plan presented in conjunction with his loan servicing options request. The County Supervisor questioned the feasibility of Mr. Baxter's plan and developed an additional plan using realistic verifiable inputs. The DALR$ program was run using both plans. We understand the borrower is considering putting part of his land in the Conservation Reserve Program (CRP) and that mediation is in process. We are developing instructions to the field which will require County Supervisors to discuss any revisions to borrower plans with them prior to running the DALR$ calculations.

C. DALR$ NET RECOVERY VALUE CALCULATION

Question 1. Because there are so many problems with FmHA appraisals and cashflows, it is unlikely that reasonable accurate information is used as input to the DALR$ program to begin with. Until those problems are corrected, we do not expect the DALR$ program to work fairly. DALR$ will frequently find less than $500 difference between recovery value and the value of the restructured loan—every and anything counts in making accurate calculations.

Answer. DALR$ is a computer driven calculation process. We agree that accurate or realistic data is very important to obtain accurate or reliable information as input to the DALR$ program. It is essential that borrowers provide realistic Farm and Home Plans. Additionally, the appeals process provides the borrower with an opportunity to appeal any disputed differences between inputs used in the DALR$ calculations.

Question 2. Nobody knows how DALR$ works because the program is not accessible and so nobody can really verify whether the calculation is accurate.

Answer. FmHA contracted with Price Waterhouse, a nationally known independent accounting firm, to perform an Independent Verification and Validation Test of the DALR$ software. A copy of their final report can be provided upon request.

Question 3. Few farmers are told why the DALR$ program computed what it did, unless they persistently go to their county office to get explanations.

Answer. Every notification package sent to the borrower included a copy of FmHA Instruction 1951–S. Exhibit J of this instruction contains an explanation of the DALR$ program calculations. Additionally, if the borrower has questions our field staff will explain the DALR$ calculations to the borrower at the time the DALR$ program is run and at any other time the borrower has additional questions.

Question 4. Some county offices are willing to deviate from the DALR$ printout in negotiating settlements with farmers and others stick rigidly to the determination on the printout.

Answer. County offices should not be deviating from the DALR$ printout to negotiate settlements with borrowers. FmHA is conducting FmHA Instruction 1951–S implementation reviews in every State. To date, our reviews have not disclosed that county office personnel are deviating from the DALR$ printout when servicing delinquent Farmer Program borrower accounts.

Question 5. FmHA does not consider the fact that thousands of acres of land may be subject to restrictive U.S. Fish and Wildlife Service easement, which, if placed on land once it enters FmHA inventory, will greatly reduce the productivity value of the land, greatly reduce its resale value, and greatly reduce the amount that FmHA could hope to recover if it were to foreclose. So widespread is this that in some counties, upwards of 75 percent of FmHA inventory ground is subject to conservation easements. Tom Bower, South Dakota Farmer Programs Director, informed DRA that the agency (or USFWS—we are not sure who has final authority here) would be considering land for easements the minute that the land entered FmHA's inventory. He also acknowledged that FmHA does not now calculate the loss that they would experience if an easement were placed on the land, though this would greatly change the net recovery value calculation. And finally, he said that they are not doing anything about this. This means that many borrowers are negotiating settlements now, or going through recovery buyout, while FmHA knows that they may have no hope of selling the land at the price used in the DALR$ program. This is clearly a violation of the Credit Act.

Answer. Since the intent of Congress is to keep the family farmers on the farm, current FmHA regulations require that the Net Recovery Value be calculated on the market value of the farm as it would be valued if the borrower were going to continue farming. If a borrower has specifically requested a conservation easement, then the market value of the farm would reflect the value of the farm with the easement in place.

FmHA policy related to the placement of conservation easements on inventory property is currently being studied. Any changes in such policy will require amendments to our existing regulations. These changes can be made only after providing the public a comment period and considering their input prior to implementing any new changes.

QUESTION D

Question 1. FmHA is not giving previous owners of farmland, or their families, the right of first refusal. Simply put, the agency's regulations appear to violate the Credit Act, and in South Dakota, the arbitrary manner in which inventories are handled compound the confusion. It appears that counties aren't following the regulations anyway. Here are some examples.[1]

Answer. FmHA in accordance with its regulations does offer the former owner the first opportunity to lease or purchase the farm once it comes into FmHA inventory. The terms of lease and priority of leaseback/buyback rights for family member depends in part whether the former owner was offered leaseback/buyback rights under the Food Security Act of 1985 or the Agricultural Credit Act of 1987. Those former owners and operators of farm property that was in inventory prior to the passage of the Agricultural Credit Act of 1987 may have been offered leaseback/buyback rights under the provisions of the Food Security Act of 1985. The terms of the lease under those provisions was limited to 1- to 3-year terms, but not to exceed what was typical for the area. Generally, leases were for a 1-year term. Those properties that were acquired after the passage of the Agricultural Credit Act of 1987 or when the former owner was not previously advised of leaseback/buyback under the 1985 act, are offered their rights in accordance with provisions of the Agricultural Credit Act of 1987. The terms of these leases are up to 5 years. We are unable to respond specifically to the examples you have provided because we are in need of additional information regarding each case. If you provide us the specific name of the former owner of the property in question, we will research each individual case and determine if proper leaseback/buyback rights were offered the former owner.

Question 2. In several instances, USFWS easements are placed on inventory ground without first refusal rights extinguished. FmHA has told DRA that they don't have any choice—if USFWS recommends it, then they have to place the easement on the land. USFWS tells us that they don't know which agency has final authority over the placement of an easement on the land. The interim regulations tell us that FmHA is to first certify that first refusal rights have been extinguished. FmHA seems to be doing this by pointing to a lease signed prior to the enactment of the Credit Act. We do not need to elaborate on the problems and inconsistencies with FmHA's and USFWS's handling of these easements, because of the extensive work done by your office to solve some of these problems. We believe that much of this could be avoided if FmHA were to honor first refusal rights as the law intended.

Answer. FmHA under its present regulations is obligated to protect federally protected environmental resources including flood plains and wetlands on inventory lands. If the property does contain Federal protected environmental resources, the use of the property will be limited by placement of deed restrictions on the property prior to sale of the property back to the former owner or a new owner. The FmHA is drafting proposed regulations that would provide that for the former owner operator, only those areas that contain wetlands that were never farmed would be protected and all other types of easements for protection of flood plain and wetlands would be optional for the former owner.

Question 3. As FmHA borrowers negotiate preservation loan servicing, they do so without knowledge that conservation easements may be placed on their land, reducing the value of the land and the ability of the producer to farm the land. In fact, we know of no borrower who has been alerted to this by FmHA.

Answer. FmHA is revising several of the notices that are required to be sent to delinquent FmHA farmer programs borrowers. These revisions will advise the borrower of possible restrictions in use of property once it is in Government inventory. These revisions will be published as part of the final rule of the FmHA Instruction 1951-S regulations.

LETTER TO SENATOR TOM DASCHLE

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[1] The examples are not a part of the printed hearing record.

E. MEDIATION

1. FmHA does, in some cases, negotiate in mediation, taking into consideration borrower's proposals and discussing them opening. [openly.] In other instances, however, FmHA does not consider appraisals or other information in mediation. Attorney Rolland Samp has sent you letters regarding this matter. His recommendation, which we endorse, is to require FmHA to negotiate in mediation in good faith.

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RECOMMENDATIONS

1. FmHA should be required to negotiate in good faith in mediation, and the regulations or an Administrative Notice should be issued which details this obligation.

Answer. When FmHA representatives attend the mediation or meeting of creditors, unless new information is presented, we have considered debt write-down to the maximum extent allowed, and, we do not have the authority to negotiate any more write-down of FmHA's debt. Therefore, if other creditors do not participate or are not willing to alter their debt repayment requirements to provide a feasible plan, FmHA cannot continue with the borrower.

2. Any State Mediation Program currently getting Federal matching funds should be subject to review of the number of cases where no agreement was reached because the creditor failed to negotiate in good faith. State programs should not get further Federal funding until such time as they demonstrate consequences to creditors and borrowers—balanced—for failure to negotiate in good faith.

Answer. FmHA cannot impose a requirement that all private lenders must participate in USDA Certified State Mediation Programs. Those lenders will be subject to the mediation laws and rules governing private lenders in each State. Appropriately, FmHA cannot withhold Federal mediation grant funds because creditors fail to negotiate in good faith in a USDA Certified Agricultural Loan Mediation Program. However, the failure of other creditors to participate in mediation will not preclude the FmHA and the borrower from mutually agreeing to a feasible plan of operation.

EDITOR'S NOTE: This concludes the responses to question 6, parts A, B, C, D, and E.

Question 7. Of concern is reported cases where FmHA changed figures without notifying the borrower. In particular, Dan Nelson of Meadow had the very same thing happen to him. I would appreciate it if you could comment on his particular case and indicate whether the Department has been contacted about other farmers who have had their plans changed?

Answer. FmHA regulations require that projected plans of operation be based on the farmer's actual 5-year history of production, income and expenses. Those farmers operating in a natural disaster designated area are authorized to use county or State average yields (if higher than the farmer's actual yields) for those years their production was affected by the disaster. Unit prices for all commodities produced commercially in each State are established by the FmHA State Director and made available to the County Offices annually to be used in developing projected plans of operation. In some situations, farmers develop their own plans of operation using inputs that differ significantly from their known history of performance. In such cases, if the farmer is not agreeable to revisions which would bring projections in line with past performance, the FmHA County Supervisor has no alternative but to reject the application or develop an FmHA plan of operation based on the FmHA required inputs. In the majority of cases, the County Supervisor and the farmer do develop a mutually agreeable plan of operation.

We have been advised by our South Dakota FmHA State Office that FmHA did not change any figures on the plan presented by Mr. Dan Nelson in conjunction with his request to purchase an inventory farm. The County Supervisor could not verify that Mr. Nelson's plan of operation was realistic, based on yields and prices used, and prepared another plan utilizing the required FmHA inputs. The loan request was denied and later appealed by Mr. Nelson. The Hearing Officer overturned the FmHA decision and requested that a new plan of operation be mutually developed by Mr. Nelson and FmHA for further consideration.

We are aware of instances alleging that FmHA personnel have made changes to plans of operation, and that the farmer was not aware of such change(s). We are advising our field offices by Administrative Notice (AN) that any and all differences must be discussed with the borrower. The AN should be completed and issued to the field within the next 2 weeks.

Question 8. Regulation 1951.909(e)(i)(xiii)(A) contains a section regarding the interest rates at which the rescheduled loan will be rewritten. The regulation indicates that the lower of the original rate or current rate will be used. What would be the interest rate in the case where the original rate was 13 percent, 4 years ago it was restructured at the then current rate of 8⅝ percent and the current rate is 9.5 percent? Under the regulations would the annual debt repayment actually be increased? What is the current definition of the "original" loan, is it defined through regulations or by law?

Answer. FmHA Instruction 1951-S provides that when rescheduling a loan, the interest rate will be the lower of original rate or current rate. The original rate is the interest on the note the borrower initially signed to evidence the indebtedness, not the interest rate on the existing note if it was previously rescheduled. In the example you presented when the original rate was 13 percent, 4 years ago in 1985, the loan was rescheduled at the then current rate of 8⅝ percent and the today's current rate is 9.5 percent; the annual debt repayment would increase since the interest rate would increase from 8⅝ percent to 9.5 percent.

ANSWERS FROM FARMERS HOME ADMINISTRATION TO QUESTIONS FROM SENATOR BOND

Question 1. There seems to be a good deal of controversy surrounding conservation easements. To begin, could you provide a brief synopsis of the history of conservation easements and highlight the various statutes and Executive orders that your agency must comply with?

Answer. The Congress, along with the executive branch, has supported a strong environmental policy over the past few years in the area of protecting wetlands and flood plains. Executive Orders 11988 and 11990, originated under President Carter and reaffirmed under Presidents Reagan and Bush, are one of the controlling factors in this area. Those orders require all Federal agencies to restrict by deed the use of wetlands and flood plains on property that comes into inventory prior to sale. Additionally, the Endangered Species, Wild and Scenic Rivers, National Historic Preservation, Coastal Barriers, Safe Drinking Water, and Wilderness Acts are potential factors in this process.

Borrowers who are considering the conveyance of their property to FmHA and in turn, plan on leasing or purchasing the property from FmHA, are advised of possible deed restrictions. The Agency is proposing regulations where the former owner will be given an option to purchase or lease with or without the conservation easement, except natural wetland areas which have never been farmed.

The Food Security Act of 1985 provides for debt relief in exchange for conservation easements.

Question 2. What exactly is the role of the United States Fish and Wildlife Service (FWS) with regard to conservation easements?

Answer. The U.S. FWS has entered into a Memorandum of Understanding with the Farmers Home Administration (FmHA) whereby FWS inspects inventory property to identity the presence of environmental resources and recommends and identifies areas to be restricted pursuant to the above controlling Executive orders and statutes.

Question 3. Recognizing that there seems to be two distinct applications of conservation easements, those entered into on inventoried property and those entered in restructuring cases, how many conservation easements agreements has FmHA entered into at this time? How many acres are involved? How many of these easements were entered into as part of restructuring packages and how many were on inventoried property?

Answer. FmHA estimates that at this time approximately 50 deed restrictions have been recorded with 1,150 in the process of being recorded. This represents approximately 100,000 to 150,000 acres. At this time, the number of conservation easements with debt write-down is not available but there has been little interest in this program.

Question 4. To date, how many recommendations for conservation easements have been made by the U.S. Fish and Wildlife Service?

Answer. At this time, we estimate that U.S. Fish and Wildlife Service has made recommendations for approximately 1,200 deed restrictions.

Question 5. There is concern among some farmers that a conservation easement will permit access to the general public, no matter what the impact to the individual's land. How are these concerns handled and is there some flexibility with regard to public access? Is there an appeal process for those who oppose the access determinations?

Answer. Access by the general public may be a factor in some cases. However, we believe in most cases this issue can be resolved through the negotiation prior to placing restrictions on the property.

There is no formal appeal process but farmers can ask for a review by the Fish and Wildlife Service and Farmers Home Administration.

The decision rests with the Farmers Home Administration.

Question 6. If the U.S. Fish and Wildlife Service makes a recommendation for a conservation easement and FmHA concurs, when is this recorded on the deed? If not while in inventory, why?

Answer. Conservation easements with debt write-down are recorded when the debt relief transaction is settled. Deed restrictions on inventory property recommended by FWS have typically been placed against the property when the title transfers. Until the property is sold, the identified environmental resources are protected by restrictions in leases if the property is leased. FmHA is modifying that procedure to allow deed restrictions to be recorded within 120 days after the previous borrower's preservation rights have been extinguished.

Question 7. With regard to restructuring packages, at what stage is a conservation easement considered? Is there a requirement that it come before debt writeoff?

Answer. Conservation easements are considered whenever requested by the borrower. If the borrower requests a conservation easement at the time of applying for primary servicing, the conservation easement is considered before debt write-down.

Question 8. What efforts does FmHA take to notify borrowers, including those who have declined or failed to qualify for primary loan servicing, of their options to exchange debt for conservation easements before moving to the next phase of loan preservation?

Answer. At the time the borrower is given his notice of loan servicing options (exhibit A, attachment 1 of FmHA Instruction 1951-S), he is informed of the conservation easement program in exchange for debt writeoff. FmHA's final rule implementing the Agricultural Credit Act of 1987 will require the County Supervisor to notify borrowers for a second time of the availability of debt write-down in exchange for conservation easement when a feasible plan cannot be achieved under Primary Loan Servicing.

Miscellaneous. In Missouri, we have learned of instances where borrowers have been requested to sign security agreements *before* beginning the restructuring process. Is there any type of Federal regulation requiring this? If not, what can be done in those cases where the security agreement was signed prematurely? In some instances, this resulted in borrowers being denied operating credit as the crop cannot be put up as security. Why couldn't these premature security agreements be invalidated?

Answer. FmHA does not require additional security as a condition of primary loan servicing. However, in most States Security Agreements must be updated (usually annually) to reflect the changes made where FmHA security has been traded, sold and/or disposed of in order to maintain a security interest in collateral securing the FmHA debt. Also, the Security Agreements are updated to describe security covered under the "hereafter acquired" clause provided for by the Universal Commercial Code. Most of the time the agreements are updated during the fall or spring as borrowers are working with the County Supervisors in completing their yearend analyses, applying for servicing actions, and in some cases requesting subsequent loans. If FmHA does not provide the operating credit for the crop-year, FmHA's lien can be subordinated to allow a borrower to obtain sufficient credit for essential operating expenses.

ANSWERS FROM FARMERS HOME ADMINISTRATION TO QUESTIONS FROM SENATOR GORTON

Question 1. FmHA has restructured a lot of accounts, however, in order for these borrowers to have a real chance to be successful it would seem that many will need to have annual operating loans. I would assume these will not be cases which commercial banks will be waiting in line to finance, especially those where a write-down has taken place. Given the continued shift from an insured or direct loan program to a guaranteed program, has any provision been made to give priority for direct loan funding for these existing borrowers?

Answer. The main objective of FmHA's servicing policy is to keep the farmer in business, whenever possible, through the use of the major restructuring options available. If a feasible plan is developed as a result of this restructuring, direct and guaranteed operating loan funds are being made available to these borrowers. For States that have used up their operating loan allotment, they may request funding of these restructured accounts from the National Office Reserve.

We expect the balance available in the National Office Reserve for FY 1989 will be sufficient to satisfy the demand from borrowers whose accounts have been restructured.

Question 2. Concerning your guaranteed loan program, it is my understanding that your regulations were recently changed to require a cash-flow margin of at least 10 percent on all farmer program type loan requests. This requires that the cash-flow available to pay debts must be 110 percent of the debt payments. Is my understanding correct?

I can appreciate the agency's desire to strengthen the guaranteed loan portfolio but wonder if this might create some inequities, particularly for the small family farmer. It seems that there are a lot of other factors—such as the length in time of farming, type of farming, carryover debt, etc.—which should be considered when deciding whether or not a loan guarantee is made to a farmer, particularly a small farmer who is most likely to be turned away at the bank without any other alternatives. Would you agree with my observations?

Answer. Your understanding is correct. FmHA does consider the family experience and/or the education of the applicant along with many other factors when considering an applicant for a guarantee. FmHA believes the 10 percent debt service margin will strengthen guaranteed loan quality and reduce losses to an acceptable level. A 10 percent margin makes good business sense, when the risks of weather, price fluctuations, insect and disease damage or unexpected equipment repairs are considered. We are currently researching this issue with lenders throughout the country and upon completion of this research and analysis we will determine if the current requirements should be modified. If so, we would expect to complete instruction changes prior to the 1990 lending session.

Question 3. I understand that your agency is permitted to transfer farmland, which has been added to your inventory of acquired property, to another Federal or State agency for conservation purposes. In fact, it is my understanding that an 85-acre dairy farm in Washington State was the first foreclosed farm in the Nation deeded to a State under this provision. (A) Given that the law provides the opportunity for a farmer to "buy back" his or her farm, do you see any conflict in the law as it pertains to the leaseback/buyback provisions and the transfer authority I already mentioned? (B) What conditions must be met before potentially productive farmland could be transferred to another agency for conservation purposes? (C) What right does the original owner have to block a transfer of this kind and regain ownership of his or her original property?

Answer. (A) There is no conflict between the transfer authority and leaseback/buyback rights of the former owner because Inventory Property that is being transferred to a Federal or State Agency for conservation purposes will only be transferred after all leaseback/buyback and homestead protection rights have been extinguished. Existing statutes, as well as FmHA regulations, provide that rights of all prior owners and operators must have expired before property is transferred to a Federal or State Agency for conservation purposes. There is, however, a conflict in the statutes in that FmHA is required to offer suitable farm property to family-size operators, but at the same time the Agency has the authority to transfer such property to a Federal or State Agency for conservation purposes. The issue is currently being reviewed in regards to natural wetlands.

(B) In transferring property to a Federal or State Agency for conservation purposes, the property must meet one of the following criteria:

1. A predominance of the land being transferred has marginal value for agricultural production.
2. A predominance of the land is environmentally sensitive.
3. A predominance of the land has special conservation management importance.

(C) We do not envision that the original owner of the inventory property will attempt to block a transfer of property to a Federal or State Agency for conservation purposes and attempt to regain ownership because all leaseback/buyback and homestead protection rights must have been extinguished prior to the Agency giving consideration to transferring the property. The former owner will have the first opportunity to lease or purchase the property prior to any deed transfer.

Question 5. I understand that when your agency sells a farm, your County Commissioners are required to select the most qualified applicant for ownership. However, because anyone can appeal this decision, a farm may sit vacant until the appeal process is completed for each of the applicants. Can anything be done administratively to expedite the appeals process and/or put the property into the hands of a qualified farmer on a timely basis—or would this require legislation?

Answer. Those individuals who make offers to purchase inventory property but are not selected by the County Committee to purchase the property do receive appeal rights. To expedite the appeal process, an appeal hearing involving all appellants is held, rather than individual appeals for each appellant. To not offer prospective purchasers an opportunity to appeal the County Committee's decision would require legislation. The land would not be leased or sold during the appeal process. The method of selecting the most needy farmer by the County Committee as required by statute is difficult to administer but would require legislation to simplify.

Question 6. A lot of borrowers did not respond to your offers for servicing. In Washington State, for instance, I understand that more than 300 borrowers failed to respond. I assume the next step for these borrowers will be some type of foreclosure. How long do you think it will take for you to deal with these cases and are any other alternatives available to these borrowers once you initiate foreclosure proceedings?

Answer. Approximately 235 borrowers in the State of Washington did not respond to our offer for primary and preservation loan servicing. These borrowers will be offered another opportunity to apply for preservation loan servicing (leaseback/buyback and homestead protection) if FmHA acquires their farms through a voluntary or involuntary conveyance of its real estate security. An involuntary conveyance (a foreclosure) will take a minimum of 18 months to 2 years to complete in the State of Washington. However, as an alternative to foreclosure, a borrower could (1) pay FmHA in full or sell the FmHA collateral for its present market value and apply the sale proceeds to liens in order of their priority, (2) transfer the collateral to someone who is willing and able to assume the debt, or (3) voluntarily convey all the collateral to FmHA.

U.S. DEPARTMENT OF AGRICULTURE,
FARMERS HOME ADMINISTRATION,
Washington, DC, July 26, 1989.

Honorable KENT CONRAD,
Chairman, Subcommittee on Agricultural Credit, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: On June 15, 1987, we responded to questions from you and other subcommittee members concerning Farmers Home Administration's (FmHA) implementation of the Agricultural Credit Act of 1987. These questions were generated by your subcommittee's May 9, 1989, oversight hearing on FmHA's implementation of the act.

We have since been advised that two of the responses concerning the operations of the National Appeals Staff were inconsistent with actual practice. The following is submitted to set the record straight and I ask that the permanent hearing record be amended to reflect these changes.

1. The answer to question No. 4 from Senator Daschle contained the following statement: "The appraisal deemed properly documented and most reflective of the current property value as determined by the appeals hearing officer is the appraisal FmHA is required to use." This is incorrect.

Hearing officers will not choose between or among appraisals, but will make a determination on whether or not the FmHA appraisal is supported by the facts and regulations. If not, the hearing officer will not endorse the appellant's appraisal but will return the case to FmHA for resolution.

Resolution could be achieved through one of four options: (1) FmHA could accept the appellant's appraisal; (2) FmHA could complete a new appraisal eliminating the errors in the first one; (3) another outside appraisal could be obtained; or (4) FmHA could negotiate a mutually acceptable value with the appellant.

In support of this procedure, hearing officers received the following instruction from the National Appeals Staff director: ". . . your decision will be that the appraisal or cash-flow statement used as the basis of the adverse action was either correct or not correct. In no case will the Hearing Officer set values, or choose one appraisal or cash-flow statement over another."

2. The answer to question No. 5 from Senator Gorton contained the following: "To expedite the appeal process, an appeal hearing involving all appellants is held, rather than individual appeals for each appellant." This is also incorrect.

The first priority of the National Appeals Staff is to assure that the law is properly implemented and that all those who request appeal rights actually receive them. Also, due to the Privacy Act and other considerations, individual hearings are conducted and individual decisions rendered. Appeal hearings involving more than one appellant are not conducted.

We appreciate the opportunity to set the record straight on these questions, and regret any inconvenience this may cause.

Sincerely,

NEAL SOX JOHNSON,
Acting Administrator.

REVIEW OF APPRAISALS IN LOAN FILES IN THE NATIONAL OFFICE

Senator Conrad as you requested we did a review of appraisals in loan files in the national office to determine the variation in capitalization and market values of FmHA appraisals. Our review of 16 appraisals from 9 States indicate that the difference ranged from the capitalization value being 5.96 percent greater than the market value to the market value being 9.36 percent greater than the capitalization value. This range would be within a normal variance found between appraisals made by different appraisers. The results of our review are as follows:

State and capitalization rate (percent)	Capitalization value	Market value	Percent difference	Sum. value	Recommended market value
Georgia: 6.02	$104,186	$103,897	.02	$105,369	$104,000
Kansas: 8.9	46,045	46,968	1.97	48,356	47,000
Minnesota:					
5.9	234,119	252,772	7.38	252,850	252,800
3.5	180,000	180,000	0	196,800	180,000
5.5	67,618	67,680	0	67,590	67,680
Oklahoma:					
2.64	297,000	297,000	0	297,000	297,000
3.0	204,667	203,400	.062	208,810	203,400
North Dakota:					
6.0	301,016	312,800	3.8	319,440	312,000
5.3	221,000	221,000	0	220,768	221,000
Pennsylvania:					
4.5	309,000	309,000	0	309,200	309,000
3.7	204,054	197,580	3.17	197,249	197,000
Tennessee: 3.3	26,060	28,500	9.36	29,700	28,500
North Carolina:					
.79	487,400	460,000	5.96	435,360	460,000
4.44	49,900	49,000	0	50,700	49,000
2.76	59,130	58,960	.028	58,620	58,800
Washington: 6.4	185,016	85,500	1.34	187,460	185,500

U.S. Department of Agriculture
Farmers Home Administration

FmHA Instruction 422.1

APPRAISAL OF FARMS AND LEASEHOLD INTEREST

I GENERAL: This subpart prescribes the policies and procedures for appraisal of farms securing Farm Ownership (FO) loans, Operating (OL) loans, Soil and Water (SW) loans to individuals, Land Conservation and Development (LCD) loans, Labor Housing (LH), and Rural Housing (RH) loans other than nonfarm tracts or small farms. All farms, except small farms appraised for RH loans, will be appraised for their market value under this subpart. (Revised 10-14-88, SPECIAL PN.)

A Definition of Appraisal. An appraisal is a determination of value based on facts which have been judiciously interpreted to arrive at a sound conclusion about the property. It is a written statement which identifies the property, adequately describes it and expresses an opinion as to its value. The dependability of the opinion is based on the thoroughness and accuracy with which facts are gathered and examined as well as the skill and experience of the person who interprets them. The appraiser finds value based on facts but does not create it.

B Appraisal Reports. Form FmHA 422-1, "Appraisal Report (Farm Tract)," Form FmHA 422-3, "Map of Property," and Form FmHA 1922-11, "Appraisal for Mineral Rights," will be used in recording appraisals except as modified by Subpart A of Part 1941, Subparts A and B of Part 1943 and Subpart D of Part 1945 of this chapter for loans of $10,000 or less. The forms will be prepared in accordance with Exhibits A, B and G of this subpart (available in any FmHA office). When applicable, Form FmHA 422-2, "Supplemental Report (Irrigation, Drainage, Levee, and Minerals)," will be prepared in conjunction with an appraisal. In no case will Form FmHA 1922-8, "Uniform Residential Appraisal Report," be used to appraise a farm under this subpart. (Revised 3-31-89, SPECIAL PN)

C Administrative Responsibility. The State Director will authorize qualified county employees to make appraisals under this Instruction. Employees must be given intensive appraisal training to establish an acceptable level of competence before they are granted authorization to make appraisals. Job descriptions for these employees will include appraisal duties. Exceptions to this policy must have prior approval of the Administrator. The State Director will designate qualified members of the State Office staff only to provide appraisal training. State Directors are authorized to contract for appraisals and appraisal training in the manner prescribed by FmHA Instruction 2024-A (available in any FmHA office). (Revised 4-23-86, SPECIAL PN.)

DISTRIBUTION: W, S, D, C

Program Operations
Real Property
Appraisals

D Real Estate Improvements to be Considered. Appraisals will be based on the farm as developed. Appraisals will reflect value of existing improvements and those included in the development plan.

II DEFINITION OF VALUES: There are different kinds of values used in farm appraisals which may be considered in arriving at the Recommended Market Value for farm properties.

A Agricultural Value: The agricultural value of farm is the amount a typical purchaser would, under usual conditions, be willing to pay and be justified in paying for the farm, as improved, for customary agricultural uses, including farm-home advantages, with the expectation of receiving typical net earnings from the farm. This value is based upon agricultural assets only and assumes an informed typical purchaser.

1 The amount the purchaser would be justified in paying for a farm for farming purposes depends in a large measure on the earning ability of the farm. In determining the earning ability of a farm, the appraiser will assume that: (Revised 4-23-86, SPECIAL PN).

(a) The farm will be operated by a typical operator for the area.

(b) The cropping system used is typical for the farm under consideration and will maintain the anticipated productivity. In determining the proper cropping system, the appraiser will take into account acreage allotments for the basic crops.

(c) Crop yields used for the farm under consideration are representative of yields generally being obtained in the area.

(d) Approved commodity prices and farm expenses are employed in estimating net income.

(e) The property will be improved as shown in Form FmHA 424-1, "Development Plan."

(f) The share of farm operating expenses, the cost of necessary farm repairs and replacements customarily paid by the landowner will be deducted from the landowner's share of income in determining net rental farm income. (Revised 4-23-86, SPECIAL PN.)

2 The appraiser will also consider the value of the farm as a home and will take this into account along with the amount that could safely be invested in the farm, based on the capitalization of the net rental farm income in arriving at its agricultural value.

B Market Value. The market value is the amount a typical purchaser [illegible] willing to pay and justified in paying for the property considering [illegible] uses and nonagricultural assets the property may have. It is assumed that the property would sell for this amount with a reasonable sales effort and that the purchaser would be a willing but not anxious buyer, and the seller would be a willing but not forced seller. A market value determination will be made for the acquisition of individual tracts of security servicing for the following: (Revised 4-23-86, SPECIAL PN.)

1 Security servicing actions required by FmHA Instruction 1965-A.

2 Rural Renewal Loans.

3 Emergency Loans.

4 Resource Conservation and Development Loans.

5 Community Services Loans and Grants.

6 Cooperative Association Loans.

7 Timber Development Loans. (Appalachian Region only.)

III BASIC FARM VALUATION PRINCIPLES: Some of the more important principles and factors affecting value that should be considered in making farm appraisals are discussed as follows:

A Fundamental Assumptions. The following is a summary of the [illegible] an appraiser must make in the appraisal of farm property:

1 The farm will be operated by a typical operator.

2 The farm will be developed as planned.

3 The crop yields are based on current practices and present farm technological methods in general use.

4 General economic conditions will remain stable.

B Location and State of Development.

1 VALUE OF PROPERTY IS AFFECTED BY LOCATION IN SEVERAL WAYS.

a The distance to market and trading centers in which applicant will conduct business. (Revised 4-23-86, SPECIAL PN.)

b Distance to the county seat or principal trading center and to the dominant city.

c Kind and condition of roads to market.

d Availability of competitive markets.

e Accessibility of the property such as convenience to schools, churches, and to main highways; potential for recreational developments, availability and costs of utilities, including domestic water.

f Location value is difficult to measure on the basis of a formula. It can be established by analysis of sales data. When location causes the property to have more value than justified on the basis of customary agricultural use, the appraiser should determine and include an estimate of what the better features will be worth to a typical buyer. (Revised 4-23-86, SPECIAL PN.)

2 STATE OF DEVELOPMENT CONSIDERATIONS. Appraisers should carefully study a community to note the quality of farming, the standard of building maintenance, and similar economic patterns. Another important factor in location is the opportunity for off-farm employment in business or industrial areas within reasonable proximity of the property being appraised. The affect on value of the availability of rented land as a normal situation should be considered in making farm appraisals.

C Home Desirability. This is an important factor in farm appraisals since the farm business provides an operator with an occupation and a home. An appraiser should consider those features which relate to family living and the satisfaction of a comfortable home. An appraiser's opinion should be based on the various home features of a farm and how they will appeal to a typical purchaser. Home use advantages have a bearing on the kind of typical buyer or operator attracted to the farm under consideration. This will affect the quality of management which will be assumed by the appraiser. The basic elements considered for home use value are the house and yard, location, all weather accessibility, water and other utilities, neighborhood, churches, schools, and recreational and scenic features. Properties with antiquated, poorly arranged and obsolete buildings will have less value than improved properties. (Revised 4-23-86, SPECIAL PN.)

D Earning Power of the Farm. The net earnings of a farm is the result of a number of factors working together. These include the kind of crops grown, acreage, yields, soil types, the type and efficiency of the operation, markets and prices of the products, and the cost of production, including fixed charges. Income as a factor in valuation must be based upon a typical operation. The valuation should not be influenced by the present management, except to the extent it is expected to affect the future value of the property. A typical operator would be the most likely operator the farm would be expected to attract who would conduct a farming operation suited to the property. An appraiser should not assume practices which have become obsolete, but should be alert to changing types of production which may be altering the typical operation in the area. Yields should be estimates of the capability for the farm being appraised operated by a typical farmer or rancher. This is the production level which [illegible] assumed in the immediate future using current farm practices and present [illegible] technology. Appraisers should avoid the fallacy of using average yields for wide areas instead of a yield level for the specific farm.

E Hazards and Detriments. A hazard is a feature which affects farm value because it creates uncertainty in the farming operation. It causes loss or damage to property or its products at irregular intervals. Hazards include flooding, hail, tornado, insects, or disease. The frequency or regularity of hazards being encountered can best be judged by analyzing the occurrence and frequency of these factors over the last few years. The effectiveness of control measures to eliminate or reduce frequency of flooding hazards with dams, ditches, and dikes, will be recognized. A detriment is an ever-present handicap which regularly or permanently injures the property. Detriments include weed infestations; irregular fields; highway and railroad right of ways which divide a farm; fumes, vapors, and smoke from factories. Run-down buildings, noncontiguous parcels of land, unsatisfactory building arrangements or unattractive farm landscaping are also detriments.

F Availability of Other Income. The availability of employment or other sources of income including rented land, are important considerations in present-day farm appraisals. Real property values usually reflect availability of other sources of income in a community which adds to the flexibility and stability of farm property. Off-farm employment opportunities often available to local operators during periods when they are not needed on their farms may enhance farm value. Recognition of dependable sources of off-farm employment and land for rent should be on a typical basis and reflect the long-time outlook for a farm.

IV THE THREE-WAY APPROACH TO MARKET VALUE: Farm appraisals made under this Instruction will be based to the extent applicable on a three-way approach, using (a) market data of prices of comparable properties, (b) capitalization, and (c) summation of all resources and facilities. This combination will provide a means of arriving at a MARKET VALUE for the full range of farm properties, which the Farmers Home Administration (FHA) is now authorized to finance.

A Market Data Approach. Using the sale prices of comparable properties sold during the most recent period is a sound and acceptable means of arriving at MARKET VALUE. The appraiser should observe, study, and record pertinent facts for as many sales of comparable property as possible. He should be certain the properties selected as comparable are so similar to the property being appraised that a prospective purchaser would likely pay an equivalent price for the farm. The objective is to deduce from sale data on comparable property the price which the property being appraised would attract on the market. If there is a lack of similarity between the property being appraised and the properties on which sales data is being used, appropriate compensating adjustments will have to be made. If the differences are numerous or pronounced, sales data on more nearly comparable property should be selected. Property selected for comparative purposes should include those in which the terms and conditions of the sale are representative of true sale transactions occurring in the community. Form FHA 422-9, "Real Estate Sales Data," will be used to record sales information.

1 Some family sales, certain contract sales, foreclosure, and purchase by uninformed or speculative buyers may not represent true sales transactions. These should be closely examined and only the true sales in this group used for comparison.

a The essential quality that should be considered in comparing sales of similar properties are: (1) Location, (2) soil and topography, (3) water resources, (4) dwelling, (5) other essential buildings, (6) allotments, (7) proportion of cropland to total land, (8) farm layout and arrangement, (9) general appearance, (10) accessibility to services and facilities, (11) state of cultivation, (12) woodland, (13) pasture, (14) urban or rural orientation, and (15) alternative uses.

b Form FHA 422-10, "Appraiser's Worksheet for Study of Comparable Properties," may be used on an optional basis since it provides a systematic method for considering quality points of comparison in analyzing the subject property in relation to properties sold on the market.

B Capitalization approach. An accurate estimate of earnings capitalized at an appropriate rate determines the earnings value. This value, generally known as capitalization value, is the amount that a prudent investor likely would pay for the property based on its future earnings and advantages. pitalization rate to be used in evaluation is most important. The pervisor will calculate the capitalization rate from the comparable d to complete the appraisal. The formula for calculating the on rate is: Cap rate = Net Income/Selling Price. The following an be used to find the capitalization rate: (Revised 10-14-88, SPECIAL PN.)

1 Rental income method. Capitalization of net rental income will translate farm rental earnings for use of land and buildings into a capitalization rate. This method will reflect one that a typical operator would adopt for the farm considering the development planned on Form FmHA 424-1. The rental income approach must be based on equitable rental terms. Studies of lease terms in each area are important to establish a fairly definite pattern of prevailing rental terms. When farm tenancy in a community is too low to determine typical rental terms, the appraiser can use rental terms for other comparable areas with similar properties in estimating returns for ownership of land and buildings. The rental income method is preferred because rental income is not affected by the operator's management ability.

2 Earnings method. The earnings method is a detailed cash flow analysis of the comparables to determine their net incomes. The net income thereby obtained will reflect the rate of return to the investment in the farm. If the exact annual income can be ascertained from the owner/operator, a more precise capitalization rate can be determined. Several determinations in this manner can provide a good indication of a reliable capitalization rate. The appraiser must use caution that capitalization rates derived in this manner reflect the typical operator and are not influenced by differences in management abilities of the operators.

C Summation Approach. An indication of value under this approach is obtained by adding the value of ESSENTIAL buildings to the market value of the Depreciation must recognize functional and economic obsolescence as physical deterioration in determining building value. This approach used for checking purposes in making the appraisal.

1 The market value of land will be the value of the land without buildings. It will include land development of a permanent nature. A value per acre for the land resources will be determined by analyzing the sale prices of comparable land.

2 The value of buildings to a farm will be determined by an analysis of the reproduction costs of modest and essential buildings and their overall attractiveness and functional utility. The following are some techniques that may be used to determine the value of buildings to a farm:

a The appraiser will estimate the remaining number of years of life in each building. He will also reduce the remaining period of years the building will be used when circumstances exist such as obsolenscence due to undesirable design or arrangement, insect infestation, lack of utility or flexibility. The estimated remaining life of buildings will also be adjusted for superior or inadequate maintainence. The method to be used in determining a percentage figure is as follows:

(1) Based on the above consideration, the appraiser will (a) estimate in years the original life of each essential building, and (b) estimate the number of years of useful life remaining for each essential building.

(2) He will then divide the number of years determined as the original life into the number of years he has decided would be remaining as each building's useful life.

(For example, if the appraiser determines a building has 20 years of useful life remaining and it has a total original life of 50 years, it has 40 percent useful life remaining. (20 years divided by 50 years.) The construction costs of a new, modest, and adequate essential building can then be multiplied by this percentage figure as a means of determining the value of the building to the farm.)

b Nonessential and extremely old buildings may have insurance value but would not add to overall building value. Such buildings would not likely be replaced and therefore would not add value to the farm.

c Dwellings should receive separate consideration in establishing value of improvements to a farm since the action of buyers and sellers generally reflect added value for attractive and functional homes within certain limits.

d Value attributable to buildings will need to reflect (1) physical depreciation caused by use and by action of the elements, (2) functional obsolescence caused by unservicable or unattractive design and poor arrangements, and (3) environmental obsolescence caused by nuisance creating surroundings. Visual appeal and arrangement of buildings have a bearing on value. The flexibility of buildings for alternative uses and their functional utility are important in determining value of buildings.

e Location of farm buildings for possible farm reorganization including potential service as a headquarters unit, acessibility to markets and potential residential value for off-farm employment will give added value to farm buildings.

f The United States census reports and studies by other Government and private agencies provide information which can serve as a guide in determining value of buildings to a farm.

3 Other assets should be recognized and reflected as a part of summation value. Minerals, lakes, streams, and rivers are feature items in this group which reflect value.

D Market Value. The appraiser will consider the results of these three approaches and make needed adjustments to these findings before reaching the final conclusion for the Recommended Market Value. The adjustments will usually be for unusual location and economic use features not otherwise recognized, and for home use features which contribute to family living satisfaction not previously reflected. After an indication of value reflected by each approach has been determined, the appraiser should re-examine the calculations and the adequacy of the data analyzed in each approach. The appraiser should give further consideration to the strong points and the weakness of each approach used. As a general rule the value indicated by the market data approach is the most reliable indicator of value. The final step is correlation of the indications of value reflected by the three approaches. The appraiser will examine the spread between the minimum and maximum figures. The appraiser will determine which approach appears to be the most reliable answer to the appraisal problem. The appraiser will temper this determination of value by the degree of reliance to be placed on the other indication of value. (Revised 4-23-86, SPECIAL PN.)

E Recommended Market Value. The appraiser's conclusion using the three approaches is the Recommended Market Value recorded in Part 7 of Form FmHA 422-1. The appraised value for mineral rights from Part VI of Form FmHA 1922-11, "Appraisal for Mineral Rights," will be added to Part 7 of Form FmHA 422-1 to arrive at the Recommended Market Value. (Revised 4-23-86, SPECIAL PN.)

V NORMAL LONG-TERM PRICES AND COSTS: The normal price level for farm products and the related level of farm costs for use in making FHA appraisals has been developed to reflect a level of value which will be representative of the agricultural value of farm property in the foreseeable future.

A National Prices and Costs. The National level of normal average commodity prices and costs has been established on the basis of the future economic outlook. It is based primarily on the average 1967-1969 commodity prices and levels. It was assumed in establishing this National projected level of normal prices there would be government participation in commodity programs. These prices also take into consideration expected future trends and such factors as population trends, National per capita income, farm production, and farm exports. The National commodity prices schedule is shown in Exhibit C of this Instruction.

B State Prices and Costs. A State schedule of normal farm commodity prices and costs consistent with Exhibits C and E will be included in a State Instruction and submitted to the National Office for prior approval. If significant price differences exist in marketing areas within a State, or if important grade or quality price differences exist, the State price schedule should reflect such differences.

1 OTHER APPRAISAL DATA. The State Director will also include other appraisal data pertinent to conditions within his State. It will include such factors as the recognized systems of farming, maintenance costs of improvements, depreciation rates for buildings, those cost items on which landlords typically share and any other items which will be helpful to the appraiser.

VI MAKING THE APPRAISAL: The method of making an appraisal will vary under different circumstances but a systematic pattern for analyzing the property should be followed.

A County Supervisor Responsibilities. The property which will serve as security for the loan will be appraised after the applicant has been found eligible and the farm and home plan indicates there is a good possibility a loan can be made. The following should be available to make the appraisal:

1 A preliminary development plan to include building construction plans, land development, and estimates, when applicable.

2 The legal description of the property to be appraised.

3 Other information needed will include:

a A legible aerial photo or map of the property.

b Information regarding real estate taxes.

c Basic crop allotments and any yields for farm if available.

d Soil Conservation Service Soil Surveys, Land-Use Maps, and plans, if available.

e Crop Insurance Program information, such as crops insured and premium charges.

4 An accumulative record of verified sales of a sufficient number of properties is needed by the appraiser for each area of the county to provide a sound basis for using the market-data approach. Such verified sales information will be recorded on Form FHA 422-9.

a A sufficient number of real estate sales data cards will be fully completed to be able to make appraisals in all parts of the unit serviced by each County Office for various types of property. Complete sales information carefully analyzed and properly verified on a representative number of sales in each area is more valuable to an appraiser than a large number of unverified and unanalyzed sales. The number of good basic sales data cards should be gradually increased. These cards need to be amended to show any physical changes that have taken place since the date of the sale. The appraiser must analyze each property as it existed at the time of the sale. The reuse of recent sales information is usually considered most desirable. County staff members should continue to accumulate sales information in the regular course of business. They will learn about real estate sales during their regular field travel which can be verified and analyzed in more detail when needed at a later date. Form FHA 422-9 can be prepared with whatever information is obtained during the initial contact with the source of such information. This will assure a continuous flow of current sales data after the system has been established without requiring a special project.

B Preparation for the Appraisal. Before going to the property to make a physical inspection, the appraiser will fully review all information provided and also obtain any additional information which he considers pertinent to the appraisal. This will include the location or description, the sales price, and the date of sale of comparable property that was sold recently which is located in the area of the property to be appraised. The appraisal should be delayed until a future time if weather or field conditions are such that an adequate and thorough inspection of the property cannot be made. Appraisals cannot always be made under ideal conditions; however, it is expected that appraisers will use good judgment in individual cases in determining that conditions are satisfactory for making a sound appraisal.

C Developing General Information.

1 The appraiser should be familiar with the general area with respect to types of farming, crop yields, production methods, and markets. There are a number of sources in addition to personal observations from which information of this type can be obtained. The appraiser should have a good working relationship with local businessmen, other lenders and farmers in the area, representatives of other agricultural agencies operating in the area, and local farmers. These sources of information are familiar with local agricultural conditions and can provide a continuing source of helpful information. The appraiser should be familiar with the general characteristics of the soil types. If questions arise about technical types, he should obtain the advise of a qualified soil technician.

2 The appraiser should become adequately familiar with the immediate neighborhood in which the farm being appraised is located. He should observe the surrounding area sufficiently to determine whether any favorable or unfavorable factors of the neighborhood have an affect on the value of the property. He should note such factors as the type of farming practiced, community development, and the type and care given to buildings and land in the immediate area. He should also observe the condition of roads, community services available and undesirable features, such as a poor location and other related community conditions.

3 Before beginning his detailed examination of the property to be appraised, the appraiser should make a general reconnaisance of the area around the property. After obtaining general information about the community, he is in a position to begin his examination of the property. After the inspection of the property he should observe and analyze comparable farms in the area for which he has sales data noting differences and similarities of the properties as a basis for comparison.

D Inspecting the Property. The first step in making an appraisal is to identify the property. Boundary lines should be checked for accuracy with the map or legal description. Minor discrepancies between the description and property lines can usually be reconciled sufficiently to continue the appraisal. If there are major discrepancies, boundary disputes, and so forth, the appraisal should not be completed until the correct description is obtained. This is especially important in farm appraisals where essential buildings or other improvements may be located close to property lines or in disputed areas.

1 During the inspection of a farm, the appraiser should have a plat or a map made from an aerial photo showing the fields and their location indicating the approximate acreage in cultivation, pasture, timber, and wasteland. The map should be on a large enough scale to show the significant features of the farm. He should locate the farmstead on the map. Correct notations should also be made as to the topography, fence lines, water supplies, and any special features such as dams, gravel pits, or underpasses. All of this should be shown and identified on the map as to their proper location on the farm.

2 The appraiser should also observe the type of farming being carried on by the present occupant and note crop yields, evidences indicating the potential of the farm, and any other indications which would show the productivity of the unit.

3 The appraiser must be careful to avoid the mistake of permitting the management of the present operator of the property to influence his decision on value since the appraisal is made on a developed basis for a typical operator.

E Evaluation of Buildings. The value of farm buildings is determined by careful examination of each building with appropriate consideration to replacement costs and the amount the buildings have depreciated in value. The replacement cost is the amount required to replace the existing building with an appropriate new one serving the same general use. Depreciation includes any loss in value of the building when compared with the replacement cost. Loss in value may also be due to obsolescence in buildings that are out of style, misplaced, or do not meet the usual standards in the area. Because of the wide differences that exist and the many factors involved in the evaluation of older buildings, a comparison with the value standards of newer type buildings [illegible] he most dependable basis for the appraisal. The appraiser is responsi- [illegible] recording his evaluation of buidlings for insurance purposes in column 12 of Part 2 of Form FHA 422-1.

VII LOAN TO HOLDERS OF LEASEHOLD INTERESTS: When it appears a loan authorized on a leasehold interest can be made, an appraisal of the leasehold interest will be required. When making appraisals on a leasehold interest, the following guides will be used in determining the market value of the leasehold interest.

A Study the provisions of the lease and make sure that such provisions are in accordance with FHA policy with respect to mortgageability and unexpired time.

B If the unexpired time of the leasehold interest is for an assured period of 50 or more years, the market values will be determined in the same manner as for a fee owner. However, the appraiser will check his recommended values by comparing them with the sales price of any comparable leaseholds in the area. If sales of comparable leasehold interests have been so infrequent in the area that such a comparison will not permit an adequate basis for establishing the market value, the appraiser may use the annuity method described below in making a check of his recommended value.

C If the unexpired term of the leasehold interest is for an assured period of less than 50 years, the appraiser will recommend the market value by a comparison of the leasehold interest being appraised with prices that have been received for comparable leaseholds in the area. In this connection, consideration must be given to the residual value of any improvements to which the lessee will be entitled at the expiration of the lease. In areas where considerable demand for loans is expected, leaseholds sales data should be accumulated for appraisal purposes. If the appraiser concludes that comparable sales data does not fully support the value of the leasehold being appraised, he will use the annuity method as an additional check of his values.

1 The annuity method is a means of calculating the value of the lease on the basis of the estimated future earnings of a leasehold interest for the lessee. This method involves a determination of the annual net farm income or net rental value, considering long-time prices and costs, that would accrue to a lessee after allowing for the annual payment to the lessor by the lessee. The amount remaining is the annual net return on the leasehold interest to the lessee. The value of the lease to the lessee is determined by multiplying the annual net return by the appropriate factor for the number of unexpired years of the lease and the private or cooperative interest rates prevailing in the area for long-term farm real estate loans. Exhibit D shows the factors for 5 percent, 6 percent, and 7 percent from 1 to 50 years. The following examples will illustrate the annuity method of determining the value of a leasehold interest to the lessee.

a The annual net return to the leaseholder is $600. The lease has an unexpired term of 40 years. The factor for 40 years at 6 percent is 15.046. $600 x 15.046 = $9,027, the market value of the lease to the leaseholder.

b The annual net return to the leaseholder is $500. The lease has an unexpired term of 20 years. The factor is for 20 years at 6 percent is 11.470. $500 x 11.470 = $5,735, the market value of the lease to the leaseholder.

2 In this case, the market value of the lessee's interest will always be less than the market value of the property appraised on a fee simple title basis.

VIII PREPARATION OF APPRAISAL REPORT: Directions for completing Form FmHA 422-1 are given on the attached Exhibits A and G (available in any FmHA office). (Revised 4-23-86, SPECIAL PN.)

Attachments: Exhibits A, B, D, E, F, and G (WSDC)
Exhibit C (WS only)

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FHA Instruction 422.1
Exhibit A

DIRECTIONS FOR PREPARING FORM FHA 422-1
APPRAISAL REPORT – FARM TRACT

I GENERAL. The appraiser will complete Form FHA 422-1 and record information and conclusions for appraisals on other than non-farm tracts or small farms. Prepare the report as follows:

A PART I – GENERAL INFORMATION.

1 ITEM A – LOCATION OF FARM. Give location of farm with respect to trading center, school, and church.

2 ITEM B – ROADS AND COMMUNITY. Classify the condition of roads and farming district as excellent, good, fair, or poor. When a problem exists with respect to the right-of-way to the farm, legal or otherwise, report it in Part 8. Comments [illegible] descriptions such as dairy, poultry, cash grain, cotton, tobacco, fruit, and general to indicate the type of farming in the community.

3 ITEM C – FARM SERVICES. Check the services available to the farm and indicate, where applicable, the number of miles from elevators, gins, and marketing facilities.

4 ITEM D – COMMUNITY FACTORS. This section applies primarily to the conditions existing in the community surrounding the farm being appraised. Compare the farm with the average in the community. These factors influence present-day sales prices so additional comments should be made in Part 8.

5 ITEM E – CONDITION OF LAND. The apparent general fertility applies to the soil fertility of the farm, as a whole, in its present condition; classify as excellent, good, fair, or poor. Note any serious weed problem together with the degree of infestation. [illegible] whether the farm is badly in need of basic land development such as drainage, [illegible] contouring, or any other factor related to the condition of the land as it affects [illegible] operation and productivity; show the acres involved. Include comments in Part 8 or on an additional sheet. When farm is to be irrigated, or is included in a drainage or levee district, complete and attach Form FHA 422-2, "Supplemental Report (Irrigation, Drainage, Levee, and Minerals)."

6 ITEM F – NATURAL RESOURCES. If it is found that mineral, timber, or other leases have been made, indicate that fact and complete Form FHA 422-2 to the extent applicable.

7 ITEM G – WATER. Complete these columns regarding the existing water supply for family and livestock use. If special problems exist, explain in Part 8.

8 ITEM H – FARMING HAZARDS. Indicate whether the farm is subject to any hazards. In the case of overflow, for example, indicate the season of the year in which overflow is most likely to occur and the extent of damage. It is important to carefully analyze the extent and frequency of hazards before estimating average yields in Part 5.

9 ITEM I – OWNERSHIP HISTORY. Discuss briefly when the farm was purchased, developed, and other facts which reflect total investment in the property. If the investment does not reflect market prices of similar properties at the time acquired explain briefly.

10 ITEM J – RENTAL TERMS. Indicate the amount of annual rent for the subject farm based on current prices and the amount of cash rent if applicable. Also, show the rental share or the quantity of product as appropriate.

11 ITEM K – TAXES. Carefully consider the taxes on the property. The assessed valuation, mill levy, and special improvement district taxes are factors that determine total taxes. Special improvement district taxes should include drainage, levee, and other taxes for which bonds have been issued. If the farm is in an improvement district, complete Form FHA 422-2 to the extent applicable. Determine the ratio of assessed valuation to present value from local sources.

B PART 2 – SUMMATION VALUATION OF BUILDINGS AS IMPROVED. List and describe all buildings which have significant security value and which will add to the value of a property. Calculate the summation value of buildings in accordance with FHA Instruction 422.1, paragraph IV C. When the value has been determined, enter that amount in column 11. Enter the total of column 11, in Part 6, as the Summation Value of the Buildings. Show in column 12 the depreciated replacement value of the buildings to determine the insurance coverage required in accordance with FHA Instruction 426.1, paragraph III. The use of this table eliminates the need for completing Form FHA 426-1, "Valuation of Buildings."

PART 3 - SALES DATA FOR COMPARABLE PROPERTIES. List farms are representative of bona fide sale transactions. Select properties so similar to the subject property that the price paid indicates the market value of the property being appraised after making minor adjustments. Enter in column 2 the type of description which sufficiently identifies the property. A brief legal description may be used in some areas or a name commonly associated with the farm, or the names of the seller and buyer. Columns 1, 3, and 4 are self-explanatory. Use columns 5, 6, 7, 8, and 9 to reflect the similarity or difference of each general factor for the property with those of the subject farm. These basic farm valuation factors are described in paragraph III of FHA Instruction 422.1. Form FHA 422-10, "Appraiser's Worksheet for Study of Comparable Properties," lists quality points for comparison. The General Factors of Columns 5, 6, 7, 8 and 9 and quality point item are: (Revised SPECIAL PN 9-12-72.)

1 LOCATION.

  a Accessibility to services and facilities;

  b Urban or rural orientation;

  c Alternative uses.

2 LAND.

  a Soil and topography;

  b Water resources and distribution;

  c Proportion of cropland to total land;

d Farm layout and arrangement;

e Pasture, including fencing and water;

f Woodland of commercial value;

g State of Cultivation.

3 BUILDINGS.

a Dwelling;

b Other essential buildings;

c General appearance;

d Farmstead water supply.

4 TIME. The adjustment for time is based on the year of the sale. (Revised SPECIAL PN 9-12-72.)

5 OTHER. A significant local factor influencing value may be inserted in column 9 as appropriate, such as SIZE, ALLOTMENTS, and GRAZING UNITS.

6 FACTOR BLOCKS. Insert (+) or (-) or (=) in the factor blocks ((5), (6), (7), (8), and (9)) to indicate differences and similarities. Insert in column 10 the adjusted per acre value. Multiply that figure by the number of acres in the subject farm and insert the total in column 11. That figure represents the market value of the subject farm based on that comparable. (Revised SPECIAL PN 9-12-72.)

7 COMMENTS. Immediately below the Part 3 Table explain in detail the differences and similarities between the comparable farms and the subject farm. Each comparable should be discussed individually under the same letter

identification and order as in the table. Include a conclusion paragraph to summarize the market value determination arrived at from all of the comparable farms. Do not use an average figure; compensations for differences may be made between the high and low values indicated in individual sales.

D PART 4 – LAND AND BUILDINGS. Comment on the general appearance, utility, structural desirability, versatility of existing and planned buildings in terms of how these facilities would serve the typical operator in conducting a successful farming operation. Discuss favorable and unfavorable features in the space provided for "Comments on condition of land . . . ." Land improvements that are needed should be planned on Form FHA 424-1, "Development Plan," and mentioned in comments. Deficiencies affecting the production and security value of the farm should also be described.

E PART 5 – USE OF LAND RESOURCES AND IMPROVEMENTS. Part 5 need ompleted when the farm will provide less than 40 percent of the operator's) gross income as shown on Form FHA 431-2, "Farm and Home Plan."

1 CROPS. Select crops based on a typical operation for the particular farm under consideration and the community in which it is located. Use a crop rotation that will maintain soil productivity, one which a typical farmer in the community would ordinarily follow. In developing such a rotation, consider all factors influencing the selection of crops to be grown, including Government allotments of controlled crops.

2 ACRES. Insert the acreage of each crop the typical operator would grow. Use the current allotment of basic crops. Obtain acreage in forest crops or acres to be established in forest crops from the forestry plan for the farm when a sustained forestry operation would be a typical operation for the farm.

3 YIELD PER ACRE. Insert the yield per acre of crops, including forest crops, that are representative of the yields a typical operator would be expected, under normal conditions, to realize in the future operation of the farm. The yields for the crops a typical operator would produce should reflect the long-time benefits of any land development planned on Form FHA 424-1, as well as current cultural practices, newest varieties in general use, and present farm technology.

4 AMOUNT. Insert the total production for each crop. For permanent pasture, insert the number of animal units it will support.

5 PRICE PER UNIT. Insert the price per unit for each commodity shown in the State Instruction prescribed and issued as required by FHA Instruction 422.1. Base the price per animal unit for pasture on the rate per animal unit customarily charged in the area. If the present rates appear unrealistic, adjust them to reflect proper return for grassland.

6 GROSS VALUE. Insert the total value of each commodity produced.

7 CASH AND/OR RENTAL SHARE. Insert in column 8 of Part 5 the appropriate rental share which reflects the proper return for ownership of land and buildings under the full scope of properties appraised regardless of size or intensity of operations. The entries in this column represent the dollar amount of rental share and the amount for those items for which the rental share is
Spec.PN 9-12-72 determined on a cash basis. Typical rental charges for buildings is the amount customarily paid for farm buildings which are developed and maintained according to FHA policy. It is important that rental terms and conditions customary for the area be considered in determining the rental share. The rental terms may be a share of the crops produced with separate cash charges for pasture, hay land, or buildings. In some cases, the cash or privilege rent for pasture and hay land includes free use of buildings. There may also be areas where it is customary for an entire farm, such as a livestock or poultry farm, to be rented on a cash
Spec/PN 9-12-72 basis. If so, record the [redacted] rental amount in column 8 opposite "CASH RENT" and no other calculations are required in the income portion of Part 5. When typical leases in an area do not include charges for buildings showing poor maintenance or run-down condition, use the best judgment in estimating cash rent for buildings developed or maintained according to FHA policy. Include the full stumpage value of annual timber sales in the landlord share when forestry products are produced on a sustained yield basis.

8 DEDUCTIONS. Those expenses which normally are paid by non-operator owners are determined and adjustments made according to the State Instruction and deducted from the rental share.

I E 8 (cont.)

a Real Estate Taxes and Assessments. Assume real estate taxes that are likely to prevail in the foreseeable future based upon present economic trends. Estimate an increased amount if community services such as roads, school, and so forth, have not been kept up to minimum requirements.

b Insurance Costs on Buildings. Use the depreciated replacement value of buildings as improved, estimated in Form FHA 422-1, Part 2, and the current rate charge for property insurance in the area; and deduct as a charge against ownership.

c Maintenance Costs on Buildings, Fences, Water Supply, Tile. Determine the amount that owners of similar farms normally spend to maintain buildings and other improvements at the level required by FHA. Use the long-time values of buildings as improved and a maintenance rate commensurate with their age, condition, and utility to determine the total amount of maintenance.

d Operating and Maintenance Costs for Irrigation and Drainage. Determine the expenses customarily shared by owners, based on current cost levels for irrigation and drainage expense items.

e Annual Payments on Bonded Debts. This includes payments due for improvements in water, irrigation, watershed, and drainage districts.

f Other Deductions. Use current costs for seeds, crop insurance, water charges, fertilizer, lime, spray material, hauling, harvesting, ginning, and marketing expenses, when it is the practice for nonoperator owners to share in such expenses.

9 NET FARM INCOME. Subtract total deductions from total rental share. The result represents the return to land, buildings, and improvements which must be divided by a rate of capitalization based upon the money market, physical and economic risks, marketability, and the attractiveness of other forms of investment.

10 CAPITALIZATION RATE FOR AREA. Obtain the rate established for the area in accordance with FHA Instruction 422.1, paragraph IV E, and adjust it to the farm as appropriate.

11 CAPITALIZATION VALUE. Divide the Net Farm Income by the Capitalization Rate to find the Capitalization Value and enter the result. This amount is an estimate of the normal earning power of the farm.

F PART 6 - SUMMATION VALUE OF FARM. List major soil types and land classes, as identified on the Map of Property, compute the acreage and describe as indicated by column headings. To determine the market per acre value of the land without buildings, take comparable market sales data and adjust (as was done in Part 3). Multiply this per acre amount by the acres in column 2 to find the summation value of that portion of the farm. Account for all of the acreage of the farm in this table regardless of its contribution to value. Add the summation value of buildings as improved to the market value of land to find the Summation Value of farm. (Revised SPECIAL PN 9-12-72.)

G PART 7 - RECOMMENDED MARKET VALUE OF FARM. This represents the final determination of value after a study of the community, an examination of the farm, and an analysis of the various factors and estimates in the report. The recommended MARKET VALUE should be an amount within the calculations and estimates obtained from sales data of comparable properties, the summation approach, and when applicable, the capitalization of net income. (Revised SPECIAL PN 9-12-72.)

H PART 8 - COMMENTS. Make full use of this space to supplement information already documented. Discuss those factors that affect the desirability of the farm and its security value.

1 ITEMS THAT MAY REQUIRE COMMENTS IN THIS PART:

a Off-farm employment opportunities.

b Rental of other land or facilities to provide an adequate farming operation.

I H 1 (cont.)

c Community factors.

d Noncontiguous tracts of land.

e Unusual condition of property.

f Timber stand.

g Mineral resources and exploitation.

h Farmstead location and building convenience.

i Any other unusual and favorable or unfavorable factors which would influence vlaue.

2 PRESENT MARKET VALUE. Record this value in Part 8 when required for the purposes outlined in FHA Instruction 422.1, paragraph II D.

I DATE AND SIGNATURE. Insert the date on which the property was appraised. This will be the date on which the property was visited and inspected for appraisal purposes. The appraiser also will sign and insert his title in the spaces provided.

II USE OF APPRAISAL REPORTS PREPARED BY OR FOR OTHER LENDERS: When Farm Ownership loans are made simultaneously with loans of Federal land banks, insurance companies or other lenders, FHA appraisers are authorized to use the appraisal reports prepared for the other lenders in determining the recommended Normal Value of the property.

Use the Following Procedure to Prepare Form FHA 422-1 in These Situations.

1 When possible, obtain copies of the participating lender's appraisal report and use the report for information such as property maps, comparable sales data, and when available, earning capacity and summation values to determine the normal value of the farm.

SPEC PN
9-12-72

2 On Form FHA 422-1, show the applicant's name, address of property, state and county, complete Part 2, Part 7, and Part 8. Explain in detail in Part 8 how the information from the other lender was used and correlated in arriving at the recommended Market Value in Part 7. If the appraiser is not satisfied with the comparable properties used by the other lender or believes he needs additional supporting comparable property sales data, he should complete Part 3. Insert the date property was appraised and signature in accordance with paragraph 1 I (eye) above.

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PN 269, 8-11-71

DIRECTIONS FOR FILLING OUT FORM FHA 422-3, "MAP OF [redacted] PROPERTY"

I **LEGAL DESCRIPTION:** The legal description on Form FHA 422-3 should be exactly the same as the legal description of the farm used in the option or elsewhere in the loan docket. The appraiser will plot the legal description of the farm on Form FHA 422-3 and check the resulting plat against present boundaries and the aerial photograph, if available. If he finds irregularities in the legal description, he should check for typographical errors and then indicate the deficiency in a statement on an attachment to Form FHA 422-3.

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II **MAP OF [redacted] PROPERTY:**

A **General.** The map may be considered as the maker's interpretation of significant features observed on inspecting the farm. Streams, draws, fields, flooded or poorly drained areas, and other topographic features should be shown on the finished map if they are significant.

B **Base Maps.** Wherever possible, an accurate base map of the farm should be obtained from the Agricultural Stabilization and Conservation Service (ASCS) County Office or some other source. If the map is obtained from the ASCS County Office, it should show boundary lines, fields, location of buildings, cropland, woodland, and other features. The appraiser should check the map carefully when he is inspecting the farm and add to it such features as direction and percent of slope, kinds of soil, degree of erosion, kinds and ownership of fences, recommended land use, and noxious weed areas. The scale of miles will be entered below the map. The location of nearby churches, schools, railroads, and power lines, which may be shown on the area limited by the size of the map, also should be indicated.

C **Location of Buildings.** It is important that the map show clearly the location of the farmstead. State Instructions may require showing and identifying buildings by number when required for insurance purposes. If preferred, the buildings may be drawn on an enlarged scale in a separate place on the map. Photographs of the buildings are helpful although not required. In cases where buildings encroach upon other land or where buildings on adjoining land encroach upon the farm under consideration, a separate report and plat should be made which will include accurate measurements showing encroachment in relation to boundaries of the farm.

D **Classifications.** The classifications appearing under "Legend" at the bottom of the map are based on Soil Conservation Service usage, and are designed to give a definite description of soils, topography, and erosion on different parts of the farm. The appraiser should write in the soil description found on the farm under "Soil Types" and enter slope classes applicable to the farm under "Slope." In this connection, soil maps prepared by the Soil Conservation Service will give helpful information regarding soil types. The completed entries at the bottom of the map might be as follows:

SOILS

1 NORFOLK FINE SANDY LOAM
2 NORFOLK SAND
3 GREENVILLE SANDY LOAM
AND SO FORTH

(The soil type entries should indicate the soils found on the particular farm. The identifying number of a given soil on one farm therefore may be different from the number assigned to the same soil on other farms.)

SLOPE

A 0 to 3%
B 3 to 8%
C 8 to 15%
D 15 to 25%

(The slope classification may be developed for a particular farm or a general classification may be used for the area. In either case the code "A" should be used to designate the most level topography and code "D" to indicate the areas having the greatest slope.)

EROSION

0 No appreciable
1 Less than 25%
2 25 to 75%
3 Over 75%

(The percentage of top soil that has been lost should be estimated and expressed according to the code appearing herewith and on the map.)

1 INSERTING ENTRIES ON THE MAP. While the appraiser is inspecting the farm, he should indicate at frequent intervals on the map the soil type, percent of slope, and degree of erosion in accordance with the following formula:

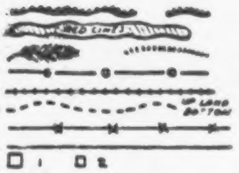
$$\frac{\text{Soil Type: Slope,}}{\text{Erosion}} \qquad \text{for example} \qquad \frac{3A}{1}$$

In the above example, the soil type would be Greenville sandy loam on a 0 to 3 percent slope with less than 25 percent of the surface soil eroded. By placing accurate formulas of this type at numerous places on the map, those reviewing the map will be able to visualize the distribution and extent of the basic soil types, as well as the important topographic features of the farm.

E Legends. The following legends should be used wherever feasible. If any changes are considered desirable, a special note indicating the changes should be made so as to leave no doubt as to the correct interpretation of the map.

Streams and ditches not being farmed across (use stream name when known) ____________ 〰〰〰→
Swale or draw--no open ditch (indicate only when significant) ____ —··——··—▸
Wells (locate, indicate windmill if present) ____________ ○
Lake or pond ____________ ∞
Grove or orchard (state kind) ________ ∴∴ Swamp___ ⩋ ⩋ ⩋

II E (cont.)



Escarpment ~~or~~ cap rock
Overflow (undercolor according to use)
Gully erosion or bad slope wash (red lines)
Power lines
Railroad (state name)
Bottom--bench or upland boundary
Fence (show ownership of boundary fence)
Farm boundary (black lines)
Buildings (number individually)
Public roads ═══ (Black lines) - Private roads

ate name) ♁ School (state name or number) ☐
a (adaptable thereto) Blue.
(properly pasture land) Blue with yellow lines.
ent) Yellow.
apable to cultivation) Yellow with blue lines.
" (tame grass-cultivated crops in rotation) Blue. State name of grass and label pasture.
Meadow (permanent native grass) Brown.
" (tame grass-cultivated crops in rotation) Blue. State name of grass and label meadow.

Timber Green.
Brush Green dots.
Stumps Black dots.
Stone Red dots.
Waste Red.

I DETAILS OF MAP PREPARATION. Do not clutter the map with unimportant details. The finished map should be prepared so that important features stand out; the less important but necessary points should be included but not emphasized. Avoid guessing the crop, soil type, topography, or erosion over the hill. A visit to the far corners of the farm will reveal features which cannot be seen from the barnyard. A soil auger, spade, or an inspection of cuts or erosion ditches will furnish important information relative to the composition of the soil profile.

a If the tracts are not contiguous, the distance between them should be indicated.

b Development plans in connection with the loan should be indicated on the map of the farm by cross-hatching or explained in a footnote.

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FHA Instruction 422.1
Exhibit C
W. S. Only

LONG-TIME COMMODITY PRICE DATA

The following National normal commodity prices will assist State Directors in preparing State Instructions for use by appraisers in making farm appraisals:

I NORMAL COMMODITY PRICES:

Commodity	Unit	Price
[illegible]es	bu.	$ 2.00
Barley	bu.	.85
Beans (Dry edible)	cwt.	8.25
Corn	bu.	1.00
Cotton	lb.	.19
Cotton Seed	ton	40.50
Flax Seed	bu.	2.60
Grapefruit	box	1.65
Hay (all) baled	ton	25.00
Oats	bu.	.57
Oranges	box	2.30
Peaches	bu.	2.50
Peanuts	lb.	.13
Potatoes	cwt.	2.15
Rice	cwt.	5.35
Rye	bu.	1.05
Sorghum (grain)	bu.	.92
Soybeans	bu.	2.35
Sugar Beets	ton	15.50
Sugar cane	ton	11.50
Sweet Potatoes	cwt.	4.50
Tobacco - all	lb.	.82
Wheat	bu.	1.20

The above price projections do not include direct supplemental payments for cotton, wheat and feed grains [illegible]en the typical operator in an area complies with cotton, wheat and [illegible] the prices used may be based on loan prices and incentive payments [illegible]ies. These projections assume that farm programs will be continued in [illegible]ncourage adjustment of supplies in line with market needs.

o 0 o

FHA Instruction 422.1
Exhibit D

PRESENT VALUE OF $1 PER ANNUM

(For Computing Normal Value of a Lease to Lessee)

Years	5%	6%	7%
1	.952	.943	.935
2	1.859	1.833	1.808
3	2.723	2.673	2.624
	3.546	3.465	3.387
	4.329	4.212	4.100
	5.076	4.917	4.767
	5.786	5.582	5.389
8	6.463	6.210	5.971
9	7.108	6.802	6.515
10	7.722	7.360	7.024
11	8.306	7.887	7.499
12	8.863	8.384	7.943
13	9.394	8.853	8.358
14	9.899	9.295	8.745
15	10.380	9.712	9.108
16	10.838	10.106	9.447
17	11.274	10.477	9.763
18	11.690	10.828	10.059
19	12.085	11.158	10.336
20	12.462	11.470	10.594
21	12.821	11.764	10.836
22	13.163	12.042	11.061
23	13.489	12.303	11.272
24	13.799	12.550	11.469
25	14.094	12.783	11.654
26	14.375	13.003	11.826
27	14.643	13.211	11.987
28	14.898	13.406	12.137
29	15.141	13.591	12.278
30	15.372	13.765	12.409
31	15.593	13.929	12.532
32	15.803	14.084	12.647
33	16.003	14.230	12.754
34	16.193	14.368	12.854
35	16.374	14.498	12.948
36	16.547	14.621	13.035
37	16.711	14.737	13.117
38	16.868	14.846	13.193
39	17.017	14.949	13.265
40	17.159	15.046	13.332
41	17.294	15.138	13.394
42	17.423	15.225	13.452
43	17.546	15.306	13.507
44	17.663	15.383	13.558
45	17.774	15.456	13.606
46	17.880	15.524	13.650
47	17.981	15.589	13.692
48	18.077	15.650	13.730
49	18.169	15.708	13.677
50	18.256	15.762	13.801

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FHA Instruction 422.1
Exhibit E

LONG-TIME COST DATA

I The following factors will be used to adjust the cost items for the inputs customarily paid by owners of rented farms.

(Current Costs = 100)

Input	1970	1971	1972	1973	1974	1975
Real estate taxes and assessments	128	122	116	110	105	100
Insurance on buildings	111	108	106	104	102	100
Maintenance: Buildings, fences, water supply, tile	105	104	103	102	101	100
Operating and maintenance costs for irrigation & drainage	111	108	106	104	102	100

II Suggested Factors for Adjusting Prices of Specified Farm Production Inputs.

(1967-69 = 100)

Input	Adjustment Factor
Seed	1.00
Fertilizer	0.95
Lime	1.10
Spray materials	1.10
Harvesting and marketing expenses	1.05

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(3-2-71) PN 247

WORK-OUT EARNINGS TABLE ON SEVERAL SALES

SALES PRICE	* NET FARM INCOME (RENTAL SHARE)	RATE OF RETURN
$30,000	$1,320	4.4%
$27,000	$1,240	4.6%
$4[illegible],000	$1,705	4.1%
[illegible]	$ 750	4.2%
$36,000	$1,545	4.3%
$22,000	$ 835	3.8%
$28,500	$1,220	4.3%
$14,000	$ 625	4.5%
$17,800	$ 814	4.6%
$24,200	$ 982	4.1%

* THE NET FARM INCOME IS DETERMINED BY USING RECENT SALES (WITHIN 2 YEARS) AND USING THE PRICE AND COST SCHEDULES IN OUR APPRAISAL INSTRUCTIONS.

TABLE 5 OF FORM FHA 422-1 MAY BE USED FOR THESE CALCULATIONS.

[illegible] THE ABOVE RATES OF RETURN A CAPITALIZATION RATE OF [illegible] PERCENT WOULD BE A CONSENSUS OPINION OF THE BUYERS REPRESENTED IN THESE TEN SALES.

GUIDE FOR PREPARATION OF FORM FmHA 1922-11
APPRAISAL FOR MINERAL RIGHTS

I PURPOSE The purposes of Exhibit G are to provide a guide to the preparation of Form FmHA 1922-11, "Appraisal For Mineral Rights," and meet the requirements for determining the appraised value for mineral rights and the Recommended Market Value of the farm. State supplements may be issued to Parts I through VII of this form and this Instruction, to incorporate sound uniform State appraisal standards for mineral rights.

II Use of Form FmHA 422-3, Supplemental Report Part IV of this form will be completed to ascertain whether (1) mineral rights may be appraised and (2) there is any need for determining appraisal value(s) for mineral rights.

III Determining Recommended Market Value of Farm

A When part or all of the mineral rights can be appraised and minerals are known to exist, the appraised value in Part VI of Form FmHA 1922-11, "Appraisal for Mineral Rights," will be added to Part 7 of Form FmHA 422-1, "Appraisal Report - Farm Tract," to arrive at the Recommended Market Value of the farm.

B When the mineral rights cannot be appraised or no known minerals or potential exist, the appraised value in Part VI of Form FmHA 1922-11, "Appraisal for Mineral Rights," will reflect 0. Part VII of Form FmHA 1922-11 will show the documented findings and reasons for making this valuation.

USDA-FmHA
Form FmHA 1922-11
(4-86)

SAMPLE-GUIDE FOR PREPARATION
APPRAISAL FOR MINERAL RIGHTS

I. GENERAL INFORMATION

A. OWNER John Doe	B. ADDRESS Anytown	C. DATE 2-7-86

D. LEGAL DESCRIPTION

NE 1/4 Section 5, T4S, R41E

E. ACREAGE

1. Cropland 120
2. Pasture 60
3. Other 0
4. TOTAL 160

F. MINERAL SITUATION

1. In Production: Three (3) oil wells came into production in 1981. New oil producing area in 1980.

2. Potential: One (1) additional oil well is expected in accordance with current development in the area. New oil wells have been variable in production during their first 3-5 years and tend to level off in production after this period. This would be the maximum number of oil wells allowed on this tract of land. No other known minerals.

G. OTHER INFORMATION

All or 100% of the mineral rights are to go to the purchaser of this quarter section.

II. INCOME APPROACH

A. RECENT ANNUAL PRODUCTION AND INCOME DATA *(If in production)* 3 wells

YEAR	UNITS	PRICE	ROYALTY RATE	GROSS RETURN
19 81	3000 barrels	$ 15	.125	$ 5625
19 82	2700	15	.125	5062
19 83	2100	18	.125	4725
19 84	1800	18	.125	4050
19 85	1500	20	.125	3750
			AVERAGE GROSS RETURN	$ 4642
			AVERAGE ANNUAL EXPENSE .... (-)	$ 1000
			AVERAGE NET INCOME	$ 3642

B. FUTURE ANNUAL PRODUCTION AND INCOME *(Expected)* 3 wells + 1 new one.

YEAR	UNITS 3 wells : 1 New	PRICE	ROYALTY RATE	GROSS RETURN
19	1500 : 1000	$ 20	.125	$ 6250
19	1500 : 700	20	.125	5500
19	1500 : 500	20	.125	5000
19	1500 : 400	20	.125	4750
19	1500 : 300	20	.125	4500
19	1500 : 300	20	.125	4500
19	1500 : 300	20	.125	4500
			AVERAGE GROSS RETURN	$ 4571
			AVERAGE ANNUAL EXPENSE .... (-)	$ 1500
			AVERAGE NET INCOME	$ 3071

II. (Continued)

1. *Capitalization of Net Income Value

(Net Income) $ 3071 divided by (Capitalization Rate) 10 % = $ 30710

2. **Present Value of future income

YEAR	UNITS	PRICE	ROYALTY	AVERAGE ANNUAL COST	NET INCOME	DISCOUNT	PRESENT VALUE
19		$	$	$	$	$	$
19							
19							
19							
19							
19							

Present Value of future income .... = (Total) $

C. INCOME VALUE (Total(s) from B1 and/or B2) .... = $ 30710

III. COMPARABLE SALES APPROACH TO VALUE

(Comparable sales: Describe and analyze any sale of comparable property.)

A. COMPARABLE A.
Sale of mineral rights for 3 producing oilwells. in 1984, with similar history of production and potential was $24,000.

B. COMPARABLE B.
Sale of 160 acres with mineral rights was $88000 in 1985. Analysis of this sale reflects that minerAl rights value was approximately $140/Acre. This property has similar potential.

C. COMPARABLE C.
Sale of 160 acres with 1/2 mineral rights - $75,000, in 1985. Analysis of this sale reflects that approximately $75/Acre was paid for the mineral rights. Similar potential in property.

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*Use if net income is long term and relatively constant

**Use if net income is short term and variable year to year. Income $= \frac{\text{1st yr. N.I.}}{(1+r)} + \frac{\text{2nd yr. N.I.}}{(1+r)^2}$ etc., for discount. Such factors can be used if the same discount rate or r is used for all years.

IV. OTHER INFORMATION APPROACH TO VALUE

(Other information indicating value statistical studies, etc.)

Statistical analysis of 30 recent sales of land, some with mineral rights and some without, disclosed approximately $160/Acre value put on mineral rights.

V. SYNTHESIS–VALUE			VI. APPRAISED VALUE
PART II C	Income	$ 30,710	
PART III	Sales	$ 26,000	$ 26,000
PART IV	Other	$ 25,600	

VII. COMMENTS AND INTERPRETATION

NAME	TITLE	DATE

Form FmHA 422-1
(Rev. 3-29-78)

APPRAISAL REPORT – FARM TRACT

~~FORM APPROVED~~
~~OMB NO. 40-R3769~~

Applicant's Name ____________________ State ____________________

Address of Property ____________________ County ____________________

PART 1. GENERAL INFORMATION

A. LOCATION OF FARM

NAME OF NEAR. TOWN ____________________
DIRECTION FROM TOWN ____________________
MILES FROM TOWN ____________________
MILES FROM NEAR. SCHOOL ____________________
MILES FROM NEAR. CHURCH ____________________

B. ROADS AND COMMUNITY

CONDITION OF ROADS ☐ E ☐ G ☐ F ☐ P
KIND OF FARM ROAD ____________________
MILES TO NEAR. PUBLIC GRAVEL OR H-S ROAD ____________________
RIGHT-OF-WAY TO FARM ☐ YES ☐ NO
FARM. DIST. CONDITION ☐ E ☐ G ☐ F ☐ P
TYPE OF FARM. IN COMMUNITY ____________________

C. FARM SERVICES

☐ R.F.D. ☐ PHONE ☐ POWER LINE ☐ MILK ROUTE
MILES FROM: ELEV. ______ GINS ______ MKTG. FACIL. ______

D. COMMUNITY FACTORS

FARM COMPARED WITH AVERAGE IN COMMUNITY:

LOCATION	☐ AVG.	☐ BETTER	☐ POORER
DESIRABILITY	☐ AVG.	☐ BETTER	☐ POORER
SALABILITY	☐ AVG.	☐ BETTER	☐ POORER
RENTABILITY	☐ AVG.	☐ BETTER	☐ POORER

E. CONDITION OF LAND

GENERAL FERTILITY ☐ E ☐ G ☐ F ☐ P
NOXIOUS ____________________ ______ %
WEEDS ____________________ ______ %
LAND NEEDS:
DRAIN ______ AC LEVEL ______ AC CONTOUR ______ AC
OTHER (SPECIFY) ____________________ AC
IRRIGATED * ______ AC, NAME OF IRRIGATION DIST. ____________________

* ATTACH SUPPLEMENTAL REPORT FHA 422-2

F. NATURAL RESOURCES *

☐ MINERALS * ☐ OIL OR GAS
☐ TIMBER ☐ GRAVEL
☐ OTHER (SPECIFY) ____________________

G. WATER *

	FARMSTEAD		PASTURE AND CROPLAND
	FAMILY USE	LIVESTOCK	
SOURCE			
WELL DEPTH			
CONVENIENT	☐ Y ☐ N	☐ Y ☐ N	☐ Y ☐ N
ADEQUATE	☐ Y ☐ N	☐ Y ☐ N	☐ Y ☐ N
DEPENDABLE	☐ Y ☐ N	☐ Y ☐ N	☐ Y ☐ N
QUALITY ACCEPTABLE	☐ Y ☐ N	☐ Y ☐ N	☐ Y ☐ N

H. FARMING HAZARDS AND DETRIMENTS

☐ OVERFLOW ☐ HAIL ☐ UNTIMELY FREEZES ☐ CROP DISEASE
☐ HARDPAN ☐ ALKALI ☐ WIND EROS. ☐ DROUGHT
☐ WATER EROS. ☐ INSECTS ☐ GRAVEL (DROUGHTY) SUBSOIL
☐ FLOOD PRONE AREA
☐ OTHER (SPECIFY) ____________________
COMMENTS ____________________

I. OWNERSHIP HISTORY

DATE BOUGHT ______ ACRES ______ PRICE $ ______
CHANGES: DATE COST
$ ______
COMMENTS ____________________

J. TYPICAL RENTAL TERMS

ANNUAL RENT $ ______ CASH $ ______
SHARE ______ % PROD. QTY. ______

K. TAXES

ASSESSED VALUE $ ______ REAL EST. TAXES 19 ______
ASSESS. RATE ______ % $ ______
MILL LEVY ______ SPEC. IMPROVE. DIST.
TAXES * $ ______

PART 2 – SUMMATION VALUATION OF BUILDINGS AS IMPROVED

KIND OF BUILDING	YEAR BUILT	CON-STRUC-TION	KIND OF ROOF	KIND OF FOUNDA-TION	SIZE: DIMENSION OR AREA OF GROUND FLOOR	SIZE: STORIES	CONDITION OF BUILDING	REPLACEMENT COST	USEFUL LIFE REMAINING	SUMMATION VALUE	DEPRECIATED REPLACEMENT VALUE (INSURANCE COVERAGE)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
A. DWELLING								$	%	$	$
B.											
C.											
D.											
E.											
F.											
TOTALS											

(ADD AN ATTACHMENT IF ADDITIONAL SPACE IS NEEDED TO DESCRIBE BUILDINGS)

Position 8

PART 3. SALE DATA FOR COMPARABLE PROPERTIES

DATE OF SALE	IDENTIFICATION OF PROPERTY	TOTAL ACREAGE	SALE PRICE		* ADJUSTMENT FACTORS					ADJUSTED VALUE	
			TOTAL	PER ACRE	LOCA-TION	LAND	BUILD-INGS	TIME	OTHER	PER ACRE	TOTAL
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
	A.		$	$	$	$	$	$	$	$	$
	B.										
	C.										
	D.										
	E.										
									MARKET VALUE	$	$

* INDICATE (+) OR (-) ADJUSTMENT IN DOLLAR AMOUNTS

INDICATE (0) OR (=) IF NO SIGNIFICANT DIFFERENCE

COMMENTS:

PART 4. LAND AND BUILDINGS

COMMENTS ON ADEQUACY AND APPROPRIATESS OF BUILDINGS TAKING INTO CONSIDERATION PLANS FOR BUILDING CONSTRUCTION OR REPAIR AS SHOWN ON FORM FHA 424-1:

COMMENTS ON CONDITION OF LAND TAKING INTO CONSIDERATION PLANS FOR LAND IMPROVEMENTS AS SHOWN ON FORM FHA 424-1.

PART 5. USE OF LAND RESOURCES AND IMPROVEMENTS

CROPS (1)	ACRES (2)	YIELD PER ACRE (3)	TOTAL PRODUCTION			CASH AND/OR RENTAL SHARE	
			AMOUNT (4)	PRICE PER UNIT (5)	GROSS VALUE (6)	RATE OR PERCENT (7)	VALUE (8)
					$		$
PERMANENT PASTURE		ANIMAL UNITS	#				
WOODLAND							
FARMSTEAD, ROADS, ETC.							
CASH RENT							$
TOTALS					$		$

DEDUCTIONS

REAL ESTATE TAXES AND ASSESSMENTS	$	
INSURANCE COSTS ON BUILDINGS,		
MAINTENANCE COSTS BUILDINGS, FENCES, WATER SUPPLY, TILE		
OPERATING AND MAINTENANCE COSTS FOR IRRIGATION AND DRAINAGE		
ANNUAL PAYMENTS ON BONDED DEBTS		
OTHER DEDUCTIONS (SEEDS, CROP INSURANCE, WATER CHARGES, FERTILIZER, LIME, SPRAY MATERIAL, HAULING, HARVESTING, GINNING, AND MARKETING EXPENSES)		
TOTAL DEDUCTIONS		$
NET FARM INCOME		$

CAPITALIZATION RATE FOR AREA ________ % CAPITALIZATION VALUE (PER. ACRE $ ________) $

L SPA

PART 6. SUMMATION VALUE OF FARM

USE OF LAND (1)	ACRES (2)	SOIL DESCRIPTION (3)	DEPTH OF TOPSOIL (4)	KIND OF SUBSOIL (5)	TOPOGRAPHY (6)	VALUE	
						PER ACRE (7)	TOTAL (8)
CROPLAND						$	$
TOTAL CROPLAND							
PERM. PASTURE							
WOODLAND							
FARMSTEAD ROADS, ETC.							
TOTALS						MARKET VALUE OF LAND	$

SUMMATION VALUE OF BUILDINGS AS IMPROVED (OBTAIN TOTAL FROM PART 2, COLUMN 11) .... $

SUMMATION VALUE OF FARM .... (PER ACRE $______) $

PART 7. RECOMMENDED MARKET VALUE OF FARM .... $

PART 8. COMMENTS

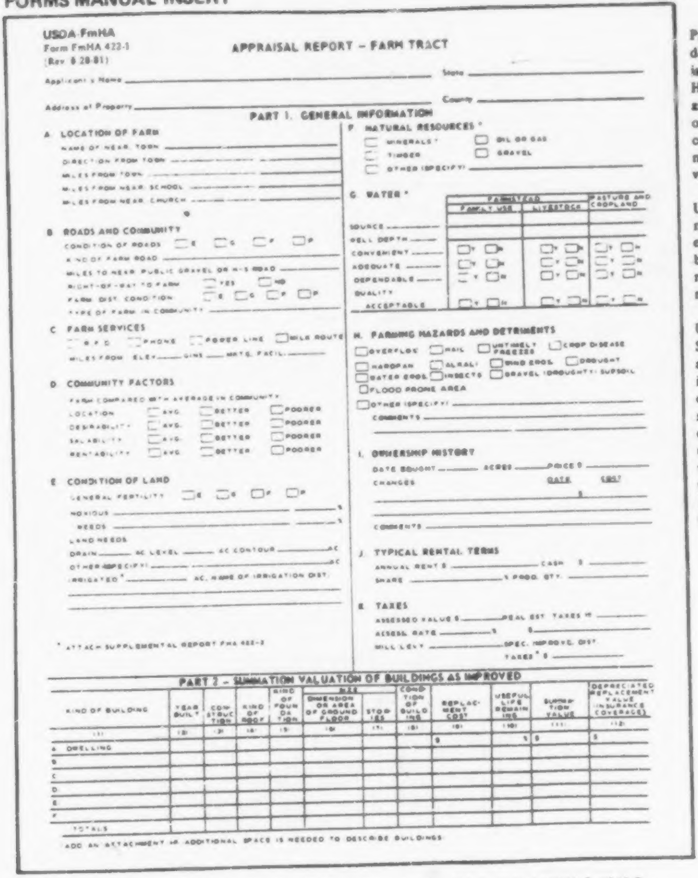
DISCUSS THE POSSIBILITIES OF RENTING OTHER LAND, FACILITIES, OFF-FARM EMPLOYMENT, FAVORABLE AND UNFAVORABLE FACTORS OF THIS PROPERTY.

PRESENT MARKET VALUE (COMPLETE WHEN APPLICABLE) $______

DATE: ...., 19 .... (SIGNED) ....

....
(TITLE)

☆U.S.GPO:1970-0-[illegible]



USDA-FmHA
Form FmHA 422-1
(Rev 8-28-81)

APPRAISAL REPORT – FARM TRACT

Applicant's Name ______ State ______

Address of Property ______ County ______

PART I. GENERAL INFORMATION

A LOCATION OF FARM
NAME OF NEAR. TOWN ______
DIRECTION FROM TOWN ______
MILES FROM TOWN ______
MILES FROM NEAR. SCHOOL ______
MILES FROM NEAR. CHURCH ______

B ROADS AND COMMUNITY
CONDITION OF ROADS ☐ E ☐ G ☐ F ☐ P
KIND OF FARM ROAD ______
MILES TO NEAR PUBLIC GRAVEL OR H-S ROAD ______
RIGHT-OF-WAY TO FARM ☐ YES ☐ NO
FARM DIST. CONDITION ☐ E ☐ G ☐ F ☐ P
TYPE OF FARM IN COMMUNITY ______

C FARM SERVICES
☐ R.F.D. ☐ PHONE ☐ POWER LINE ☐ MILK ROUTE
MILES FROM ELEV. ______ GINS ______ MKTG. FACIL. ______

D COMMUNITY FACTORS
FARM COMPARED WITH AVERAGE IN COMMUNITY
LOCATION ☐ AVG. ☐ BETTER ☐ POORER
DESIRABILITY ☐ AVG. ☐ BETTER ☐ POORER
SALABILITY ☐ AVG. ☐ BETTER ☐ POORER
RENTABILITY ☐ AVG. ☐ BETTER ☐ POORER

E CONDITION OF LAND
GENERAL FERTILITY ☐ E ☐ G ☐ F ☐ P
NOXIOUS ______ ______ %
WEEDS ______ ______ %
LAND NEEDS
DRAIN ______ AC LEVEL ______ AC CONTOUR ______ AC
OTHER (SPECIFY) ______ AC
IRRIGATED* ______ AC, NAME OF IRRIGATION DIST. ______

* ATTACH SUPPLEMENTAL REPORT FMHA 422-2

F NATURAL RESOURCES *
☐ MINERALS* ☐ OIL OR GAS
☐ TIMBER ☐ GRAVEL
☐ OTHER (SPECIFY) ______

G WATER *

	FARMSTEAD		PASTURE AND CROPLAND
	FAMILY USE	LIVESTOCK	
SOURCE ______			
WELL DEPTH ______			
CONVENIENT ______	☐ Y ☐ N	☐ Y ☐ N	☐ Y ☐ N
ADEQUATE ______	☐ Y ☐ N	☐ Y ☐ N	☐ Y ☐ N
DEPENDABLE ______	☐ Y ☐ N	☐ Y ☐ N	☐ Y ☐ N
QUALITY ACCEPTABLE	☐ Y ☐ N	☐ Y ☐ N	☐ Y ☐ N

H. FARMING HAZARDS AND DETRIMENTS
☐ OVERFLOW ☐ HAIL ☐ UNTIMELY FREEZES ☐ CROP DISEASE
☐ HARDPAN ☐ ALKALI ☐ WIND EROS. ☐ DROUGHT
☐ WATER EROS. ☐ INSECTS ☐ GRAVEL (DROUGHTY) SUBSOIL
☐ FLOOD PRONE AREA
☐ OTHER (SPECIFY) ______
COMMENTS ______

I. OWNERSHIP HISTORY
DATE BOUGHT ______ ACRES ______ PRICE $ ______
CHANGES DATE COST
$ ______
COMMENTS ______

J. TYPICAL RENTAL TERMS
ANNUAL RENT $ ______ CASH $ ______
SHARE ______ % PROD. QTY. ______

K TAXES
ASSESSED VALUE $ ______ REAL EST. TAXES 19 ______
ASSESS. RATE ______ % $ ______
MILL LEVY ______ SPEC. IMPROVE. DIST.
TAXES* $ ______

PART 2 – SUMMATION VALUATION OF BUILDINGS AS IMPROVED

KIND OF BUILDING	YEAR BUILT	CON-STRUCTION	KIND OF ROOF	KIND OF FOUNDATION	SIZE: DIMENSION OR AREA OF GROUND FLOOR	SIZE: STORIES	CONDITION OF BUILDING	REPLACEMENT COST	USEFUL LIFE REMAINING	SUMMATION VALUE	DEPRECIATED REPLACEMENT VALUE (INSURANCE COVERAGE)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
A DWELLING								$	%	$	$
B											
C											
D											
E											
F											
TOTALS											

ADD AN ATTACHMENT IF ADDITIONAL SPACE IS NEEDED TO DESCRIBE BUILDINGS

Prepared by appraiser to determine whether a farm is suitable for a Farmers Home Administration loan and to arrive at the value of the farm (normal earning capacity value; normal market value; present market value).

Used by the County Committee as a guide in establishing the value to be certified (fair and reasonable value; normal market value).

Used by the County Supervisor and loan approval official to assist in determining adequacy of the farm, its value as security, and the soundness of a proposed loan. Also used as a guide to establish value in case the farm is transferred, acquired by the Government, or sold by the Government.

(see reverse)

PROCEDURE FOR PREPARATION : FmHA Instructions 422.1, 1901-C, 1941-A, 1945-C, 1945-D and 1965-A.

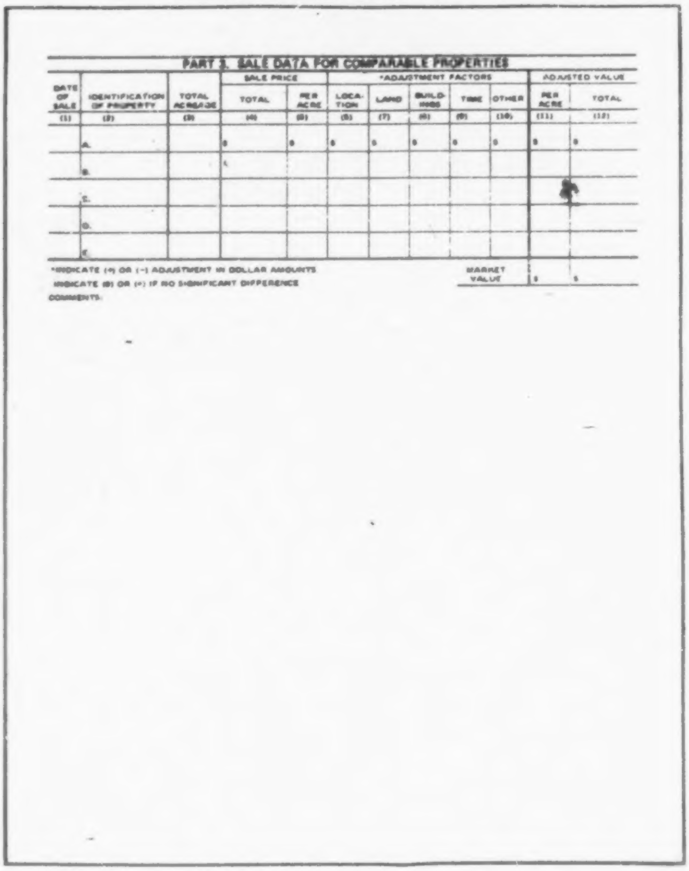
PREPARED BY : Appraiser.

NUMBER OF COPIES : Original only.

SIGNATURES REQUIRED : Appraiser.

DISTRIBUTION OF COPIES : To loan docket.

PAGE 2 OF FORM FmHA 422-1



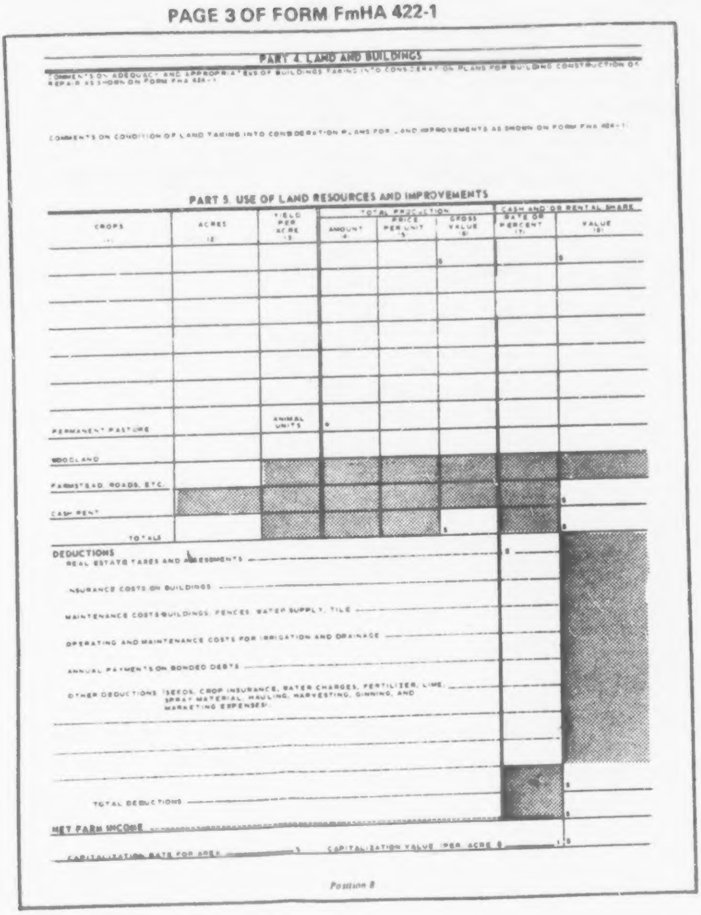
PART 3. SALE DATA FOR COMPARABLE PROPERTIES

DATE OF SALE	IDENTIFICATION OF PROPERTY	TOTAL ACREAGE	SALE PRICE		*ADJUSTMENT FACTORS					ADJUSTED VALUE	
			TOTAL	PER ACRE	LOCATION	LAND	BUILDINGS	TIME	OTHER	PER ACRE	TOTAL
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
	A.		$	$	$	$	$	$	$	$	$
	B.										
	C.										
	D.										
	E.										
									MARKET VALUE	$	$

*INDICATE (+) OR (−) ADJUSTMENT IN DOLLAR AMOUNTS
INDICATE (0) OR (=) IF NO SIGNIFICANT DIFFERENCE

COMMENTS:

PAGE 3 OF FORM FmHA 422-1



PART 4. LAND AND BUILDINGS

COMMENTS ON ADEQUACY AND APPROPRIATENESS OF BUILDINGS TAKING INTO CONSIDERATION PLANS FOR BUILDING CONSTRUCTION OR REPAIR AS SHOWN ON FORM FHA 424-1

COMMENTS ON CONDITION OF LAND TAKING INTO CONSIDERATION PLANS FOR LAND IMPROVEMENTS AS SHOWN ON FORM FHA 424-1

PART 5. USE OF LAND RESOURCES AND IMPROVEMENTS

			TOTAL PRODUCTION			CASH AND/OR RENTAL SHARE	
CROPS (1)	ACRES (2)	YIELD PER ACRE (3)	AMOUNT (4)	PRICE PER UNIT (5)	GROSS VALUE (6)	RATE OR PERCENT (7)	VALUE (8)
					$		$
PERMANENT PASTURE		ANIMAL UNITS	@				
WOODLAND							
FARMSTEAD, ROADS, ETC.		▨	▨	▨	▨	▨	▨
CASH RENT	▨	▨	▨	▨	▨	▨	$
TOTALS		▨	▨	▨	$	▨	$

DEDUCTIONS

REAL ESTATE TAXES AND ASSESSMENTS ____ $

INSURANCE COSTS ON BUILDINGS ____

MAINTENANCE COSTS-BUILDINGS, FENCES, WATER SUPPLY, TILE ____

OPERATING AND MAINTENANCE COSTS FOR IRRIGATION AND DRAINAGE ____

ANNUAL PAYMENTS ON BONDED DEBTS ____

OTHER DEDUCTIONS (SEEDS, CROP INSURANCE, WATER CHARGES, FERTILIZER, LIME, SPRAY MATERIAL, HAULING, HARVESTING, GINNING, AND MARKETING EXPENSES) ____

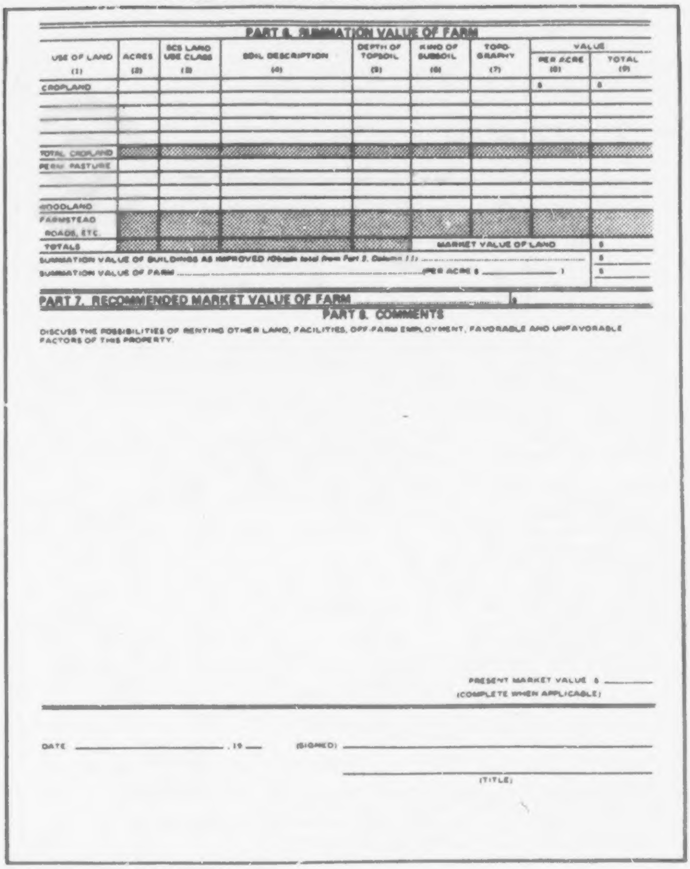
TOTAL DEDUCTIONS ____ $

NET FARM INCOME ____ $

CAPITALIZATION RATE FOR AREA ____ % CAPITALIZATION VALUE (PER ACRE $ ____) $

Position 8

PAGE 4 OF FORM FmHA 422-1



PART 6. SUMMATION VALUE OF FARM

USE OF LAND (1)	ACRES (2)	SCS LAND USE CLASS (3)	SOIL DESCRIPTION (4)	DEPTH OF TOPSOIL (5)	KIND OF SUBSOIL (6)	TOPOGRAPHY (7)	VALUE PER ACRE (8)	VALUE TOTAL (9)
CROPLAND							$	$
TOTAL CROPLAND								
PERM. PASTURE								
WOODLAND								
FARMSTEAD ROADS, ETC.								
TOTALS					MARKET VALUE OF LAND			$

SUMMATION VALUE OF BUILDINGS AS IMPROVED (Obtain total from Part 5, Column 11) .... $

SUMMATION VALUE OF FARM .... (PER ACRE $ ________) $

PART 7. RECOMMENDED MARKET VALUE OF FARM .... $

PART 8. COMMENTS

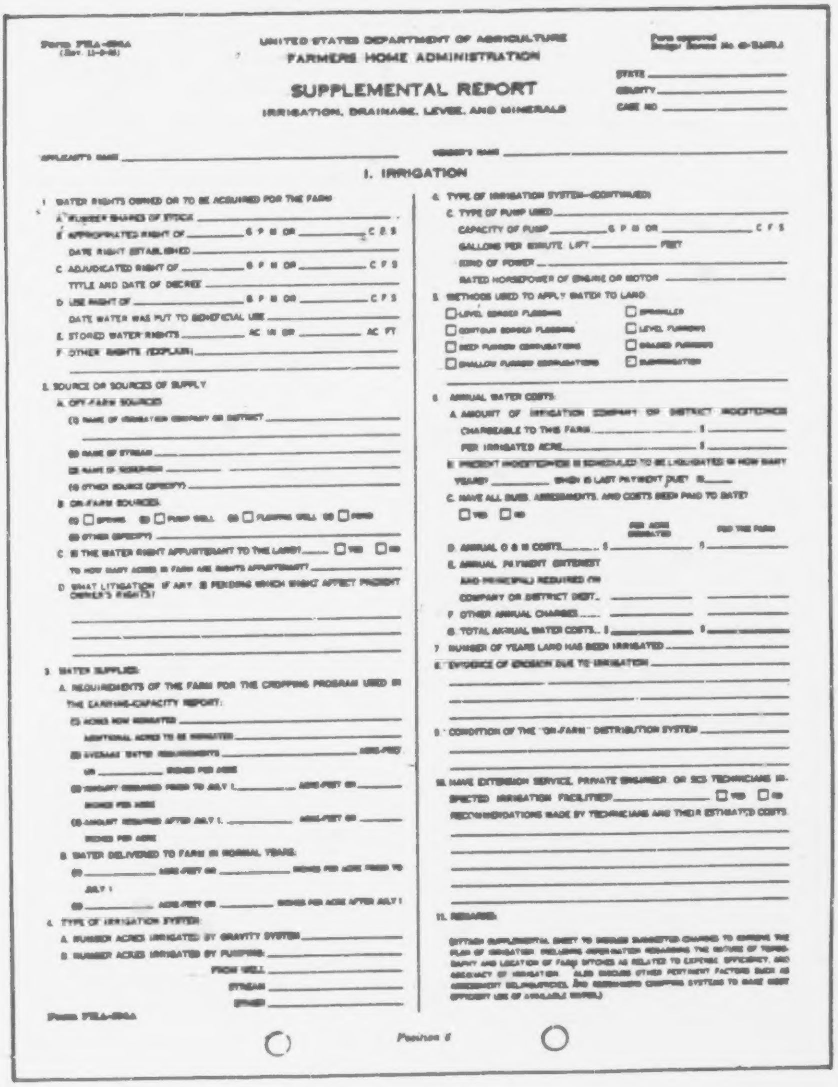
DISCUSS THE POSSIBILITIES OF RENTING OTHER LAND, FACILITIES, OFF-FARM EMPLOYMENT, FAVORABLE AND UNFAVORABLE FACTORS OF THIS PROPERTY.

PRESENT MARKET VALUE $ ________
(COMPLETE WHEN APPLICABLE)

DATE ________________, 19 ___ (SIGNED) ________________________

____
(TITLE)

422-2



Form FHA-[illegible]
(Rev. [illegible])

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

Form approved
Budget Bureau No. [illegible]

SUPPLEMENTAL REPORT

IRRIGATION, DRAINAGE, LEVEE, AND MINERALS

STATE ____________
COUNTY ____________
CASE NO. ____________

APPLICANT'S NAME ____________ OWNER'S NAME ____________

I. IRRIGATION

1. WATER RIGHTS OWNED OR TO BE ACQUIRED FOR THE FARM
   - A. NUMBER SHARES OF STOCK ____________
   - B. APPROPRIATED RIGHT OF ______ G P M OR ______ C F S
   - DATE RIGHT ESTABLISHED ____________
   - C. ADJUDICATED RIGHT OF ______ G P M OR ______ C F S
   - TITLE AND DATE OF DECREE ____________
   - D. USE RIGHT OF ______ G P M OR ______ C F S
   - DATE WATER WAS PUT TO BENEFICIAL USE ____________
   - E. STORED WATER RIGHTS ______ AC IN OR ______ AC FT
   - F. OTHER RIGHTS (EXPLAIN) ____________

2. SOURCE OR SOURCES OF SUPPLY
   - A. OFF-FARM SOURCES
     - (1) NAME OF IRRIGATION COMPANY OR DISTRICT ____________
     - (2) NAME OF STREAM ____________
     - (3) NAME OF RESERVOIR ____________
     - (4) OTHER SOURCE (SPECIFY) ____________
   - B. ON-FARM SOURCES
     - (1) ☐ SPRING (2) ☐ PUMP WELL (3) ☐ FLOWING WELL (4) ☐ POND
     - (5) OTHER (SPECIFY) ____________
   - C. IS THE WATER RIGHT APPURTENANT TO THE LAND? ______ ☐ YES ☐ NO
   - TO HOW MANY ACRES IN FARM ARE RIGHTS APPURTENANT? ____________
   - D. WHAT LITIGATION, IF ANY, IS PENDING WHICH MIGHT AFFECT PRESENT OWNER'S RIGHTS?

3. WATER SUPPLIES:
   - A. REQUIREMENTS OF THE FARM FOR THE CROPPING PROGRAM USED IN THE EARNING-CAPACITY REPORT:
     - (1) ACRES NOW IRRIGATED ____________
     - ADDITIONAL ACRES TO BE IRRIGATED ____________
     - (2) AVERAGE WATER REQUIREMENTS ______ ACRE-FEET OR ______ INCHES PER ACRE
     - (3) AMOUNT REQUIRED PRIOR TO JULY 1 ______ ACRE-FEET OR ______ INCHES PER ACRE
     - (4) AMOUNT REQUIRED AFTER JULY 1 ______ ACRE-FEET OR ______ INCHES PER ACRE
   - B. WATER DELIVERED TO FARM IN NORMAL YEARS:
     - (1) ______ ACRE-FEET OR ______ INCHES PER ACRE PRIOR TO JULY 1
     - (2) ______ ACRE-FEET OR ______ INCHES PER ACRE AFTER JULY 1

4. TYPE OF IRRIGATION SYSTEM:
   - A. NUMBER ACRES IRRIGATED BY GRAVITY SYSTEM ____________
   - B. NUMBER ACRES IRRIGATED BY PUMPING: ____________
     - FROM WELL ____________
     - STREAM ____________
     - OTHER ____________

Form FHA-[illegible]

4. TYPE OF IRRIGATION SYSTEM—(CONTINUED)
   - C. TYPE OF PUMP USED ____________
   - CAPACITY OF PUMP ______ G P M OR ______ C F S
   - GALLONS PER MINUTE. LIFT ______ FEET
   - KIND OF POWER ____________
   - RATED HORSEPOWER OF ENGINE OR MOTOR ____________

5. METHODS USED TO APPLY WATER TO LAND
   - ☐ LEVEL BORDER FLOODING ☐ SPRINKLER
   - ☐ CONTOUR BORDER FLOODING ☐ LEVEL FURROWS
   - ☐ DEEP FURROW CORRUGATIONS ☐ GRADED FURROWS
   - ☐ SHALLOW FURROW CORRUGATIONS ☐ SUBIRRIGATION

6. ANNUAL WATER COSTS:
   - A. AMOUNT OF IRRIGATION COMPANY OR DISTRICT INDEBTEDNESS CHARGEABLE TO THIS FARM ______ $ ______
   - PER IRRIGATED ACRE ______ $ ______
   - B. PRESENT INDEBTEDNESS IS SCHEDULED TO BE LIQUIDATED IN HOW MANY YEARS? ______ WHEN IS LAST PAYMENT DUE? 19____
   - C. HAVE ALL DUES, ASSESSMENTS, AND COSTS BEEN PAID TO DATE? ☐ YES ☐ NO

	PER ACRE IRRIGATED	FOR THE FARM
D. ANNUAL O & M COSTS	$ ______	$ ______
E. ANNUAL PAYMENT (INTEREST AND PRINCIPAL) REQUIRED ON COMPANY OR DISTRICT DEBT	______	______
F. OTHER ANNUAL CHARGES	______	______
G. TOTAL ANNUAL WATER COSTS	$ ______	$ ______

7. NUMBER OF YEARS LAND HAS BEEN IRRIGATED ____________

8. EVIDENCE OF EROSION DUE TO IRRIGATION ____________

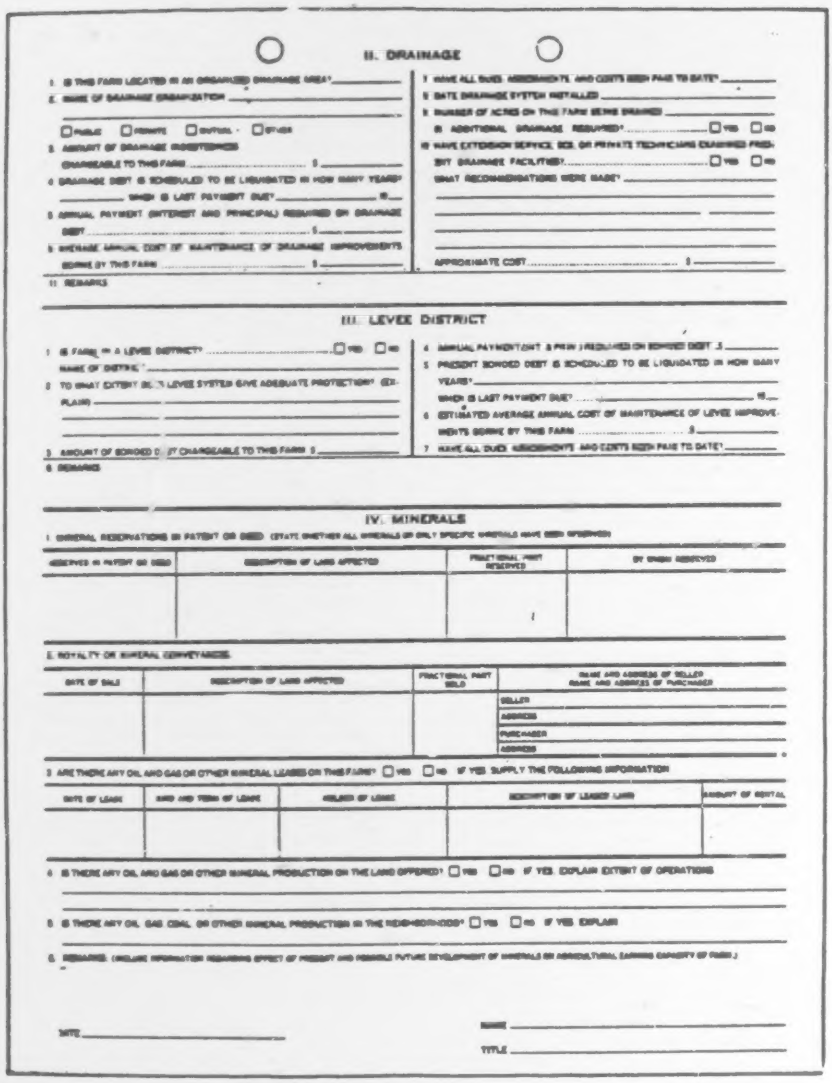
9. CONDITION OF THE "ON-FARM" DISTRIBUTION SYSTEM ____________

10. HAVE EXTENSION SERVICE, PRIVATE ENGINEER, OR SCS TECHNICIANS INSPECTED IRRIGATION FACILITIES? ______ ☐ YES ☐ NO
    RECOMMENDATIONS MADE BY TECHNICIANS AND THEIR ESTIMATED COSTS.

11. REMARKS:
    (ATTACH SUPPLEMENTAL SHEET TO DISCUSS SUGGESTED CHANGES TO IMPROVE THE PLAN OF IRRIGATION INCLUDING INFORMATION REGARDING THE NATURE OF TOPOGRAPHY AND LOCATION OF FARM DITCHES AS RELATED TO EXPENSE, EFFICIENCY, AND ADEQUACY OF IRRIGATION. ALSO DISCUSS OTHER PERTINENT FACTORS SUCH AS ASSESSMENT DELINQUENCIES, AND RECOMMEND CROPPING SYSTEMS TO MAKE MOST EFFICIENT USE OF AVAILABLE WATER.)

Position 6

(SEE REVERSE)



II. DRAINAGE

1 IS THIS FARM LOCATED IN AN ORGANIZED DRAINAGE AREA? ____

2 NAME OF DRAINAGE ORGANIZATION ____

☐ PUBLIC ☐ PRIVATE ☐ MUTUAL ☐ OTHER

3 AMOUNT OF DRAINAGE INDEBTEDNESS CHARGEABLE TO THIS FARM $ ____

4 DRAINAGE DEBT IS SCHEDULED TO BE LIQUIDATED IN HOW MANY YEARS? ____ WHEN IS LAST PAYMENT DUE? ____ 19__

5 ANNUAL PAYMENT (INTEREST AND PRINCIPAL) REQUIRED ON DRAINAGE DEBT $ ____

6 AVERAGE ANNUAL COST OF MAINTENANCE OF DRAINAGE IMPROVEMENTS BORNE BY THIS FARM $ ____

7 HAVE ALL DUES, ASSESSMENTS, AND COSTS BEEN PAID TO DATE? ____

8 DATE DRAINAGE SYSTEM INSTALLED ____

9 NUMBER OF ACRES ON THIS FARM BEING DRAINED ____

IS ADDITIONAL DRAINAGE REQUIRED? ☐ YES ☐ NO

10 HAVE EXTENSION SERVICE, SCS, OR PRIVATE TECHNICIANS EXAMINED PRESENT DRAINAGE FACILITIES? ☐ YES ☐ NO

WHAT RECOMMENDATIONS WERE MADE? ____

APPROXIMATE COST $ ____

11 REMARKS

III. LEVEE DISTRICT

1 IS FARM IN A LEVEE DISTRICT? ☐ YES ☐ NO

NAME OF DISTRICT ____

2 TO WHAT EXTENT DOES LEVEE SYSTEM GIVE ADEQUATE PROTECTION? (EXPLAIN) ____

3 AMOUNT OF BONDED DEBT CHARGEABLE TO THIS FARM $ ____

4 ANNUAL PAYMENT (INT. & PRIN.) REQUIRED ON BONDED DEBT $ ____

5 PRESENT BONDED DEBT IS SCHEDULED TO BE LIQUIDATED IN HOW MANY YEARS? ____

WHEN IS LAST PAYMENT DUE? ____ 19__

6 ESTIMATED AVERAGE ANNUAL COST OF MAINTENANCE OF LEVEE IMPROVEMENTS BORNE BY THIS FARM $ ____

7 HAVE ALL DUES, ASSESSMENTS, AND COSTS BEEN PAID TO DATE? ____

8 REMARKS

IV. MINERALS

1 MINERAL RESERVATIONS IN PATENT OR DEED (STATE WHETHER ALL MINERALS OR ONLY SPECIFIC MINERALS HAVE BEEN RESERVED)

RESERVED IN PATENT OR DEED	DESCRIPTION OF LAND AFFECTED	FRACTIONAL PART RESERVED	BY WHOM RESERVED

2 ROYALTY OR MINERAL CONVEYANCES

DATE OF SALE	DESCRIPTION OF LAND AFFECTED	FRACTIONAL PART SOLD	NAME AND ADDRESS OF SELLER NAME AND ADDRESS OF PURCHASER
			SELLER
			ADDRESS
			PURCHASER
			ADDRESS

3 ARE THERE ANY OIL AND GAS OR OTHER MINERAL LEASES ON THIS FARM? ☐ YES ☐ NO IF YES, SUPPLY THE FOLLOWING INFORMATION

DATE OF LEASE	KIND AND TERM OF LEASE	HOLDER OF LEASE	DESCRIPTION OF LEASED LAND	AMOUNT OF RENTAL

4 IS THERE ANY OIL AND GAS OR OTHER MINERAL PRODUCTION ON THE LAND OFFERED? ☐ YES ☐ NO IF YES, EXPLAIN EXTENT OF OPERATIONS

5 IS THERE ANY OIL, GAS, COAL, OR OTHER MINERAL PRODUCTION IN THE NEIGHBORHOOD? ☐ YES ☐ NO IF YES, EXPLAIN

6 REMARKS: (INCLUDE INFORMATION REGARDING EFFECT OF PRESENT AND POSSIBLE FUTURE DEVELOPMENT OF MINERALS ON AGRICULTURAL EARNING CAPACITY OF FARM.)

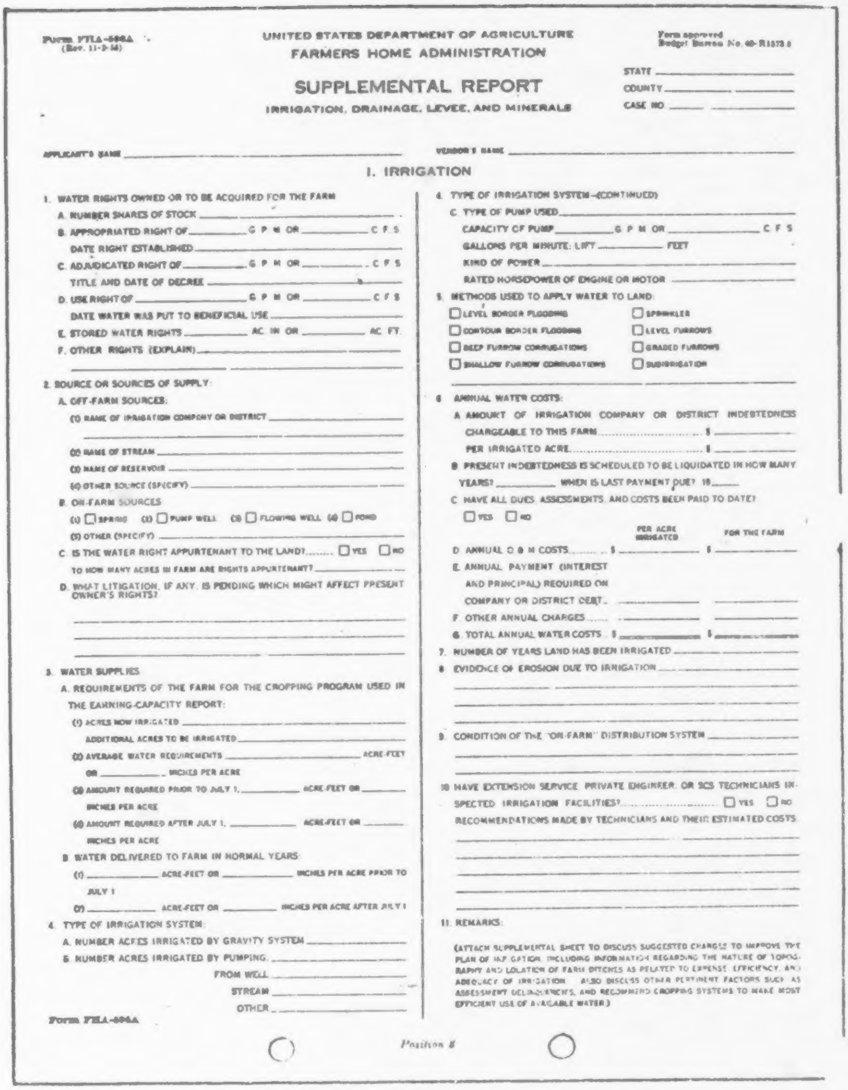
DATE ____

NAME ____

TITLE ____

Reverse

FORM FHA-422-2
4·2



Form FHA-406A
(Rev. 11-3-56)

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

Form approved
Budget Bureau No. 40-R1573.1

SUPPLEMENTAL REPORT

IRRIGATION, DRAINAGE, LEVEE, AND MINERALS

STATE ____
COUNTY ____
CASE NO ____

APPLICANT'S NAME ____ VENDOR'S NAME ____

I. IRRIGATION

1. WATER RIGHTS OWNED OR TO BE ACQUIRED FOR THE FARM
   A. NUMBER SHARES OF STOCK ____
   B. APPROPRIATED RIGHT OF ____ G P M OR ____ C F S
   DATE RIGHT ESTABLISHED ____
   C. ADJUDICATED RIGHT OF ____ G P M OR ____ C F S
   TITLE AND DATE OF DECREE ____
   D. USE RIGHT OF ____ G P M OR ____ C F S
   DATE WATER WAS PUT TO BENEFICIAL USE ____
   E. STORED WATER RIGHTS ____ AC. IN OR ____ AC. FT.
   F. OTHER RIGHTS (EXPLAIN) ____
2. SOURCE OR SOURCES OF SUPPLY:
   A. OFF-FARM SOURCES:
   (1) NAME OF IRRIGATION COMPANY OR DISTRICT ____
   (2) NAME OF STREAM ____
   (3) NAME OF RESERVOIR ____
   (4) OTHER SOURCE (SPECIFY) ____
   B. ON-FARM SOURCES
   (1) ☐ SPRING (2) ☐ PUMP WELL (3) ☐ FLOWING WELL (4) ☐ POND
   (5) OTHER (SPECIFY) ____
   C. IS THE WATER RIGHT APPURTENANT TO THE LAND? .... ☐ YES ☐ NO
   TO HOW MANY ACRES IN FARM ARE RIGHTS APPURTENANT? ____
   D. WHAT LITIGATION, IF ANY, IS PENDING WHICH MIGHT AFFECT PRESENT OWNER'S RIGHTS?
3. WATER SUPPLIES
   A. REQUIREMENTS OF THE FARM FOR THE CROPPING PROGRAM USED IN THE EARNING-CAPACITY REPORT:
   (1) ACRES NOW IRRIGATED ____
   ADDITIONAL ACRES TO BE IRRIGATED ____
   (2) AVERAGE WATER REQUIREMENTS ____ ACRE-FEET OR ____ INCHES PER ACRE
   (3) AMOUNT REQUIRED PRIOR TO JULY 1, ____ ACRE-FEET OR ____ INCHES PER ACRE
   (4) AMOUNT REQUIRED AFTER JULY 1, ____ ACRE-FEET OR ____ INCHES PER ACRE
   B. WATER DELIVERED TO FARM IN NORMAL YEARS:
   (1) ____ ACRE-FEET OR ____ INCHES PER ACRE PRIOR TO JULY 1
   (2) ____ ACRE-FEET OR ____ INCHES PER ACRE AFTER JULY 1
4. TYPE OF IRRIGATION SYSTEM:
   A. NUMBER ACRES IRRIGATED BY GRAVITY SYSTEM ____
   B. NUMBER ACRES IRRIGATED BY PUMPING ____
   FROM WELL ____
   STREAM ____
   OTHER ____

4. TYPE OF IRRIGATION SYSTEM—(CONTINUED)
   C. TYPE OF PUMP USED ____
   CAPACITY OF PUMP ____ G P M OR ____ C F S
   GALLONS PER MINUTE; LIFT ____ FEET
   KIND OF POWER ____
   RATED HORSEPOWER OF ENGINE OR MOTOR ____
5. METHODS USED TO APPLY WATER TO LAND:
   ☐ LEVEL BORDER FLOODING
   ☐ CONTOUR BORDER FLOODING
   ☐ DEEP FURROW CORRUGATIONS
   ☐ SHALLOW FURROW CORRUGATIONS
   ☐ SPRINKLER
   ☐ LEVEL FURROWS
   ☐ GRADED FURROWS
   ☐ SUBIRRIGATION
6. ANNUAL WATER COSTS:
   A. AMOUNT OF IRRIGATION COMPANY OR DISTRICT INDEBTEDNESS CHARGEABLE TO THIS FARM .... $ ____
   PER IRRIGATED ACRE .... $ ____
   B. PRESENT INDEBTEDNESS IS SCHEDULED TO BE LIQUIDATED IN HOW MANY YEARS? ____ WHEN IS LAST PAYMENT DUE? 19____
   C. HAVE ALL DUES, ASSESSMENTS, AND COSTS BEEN PAID TO DATE?
   ☐ YES ☐ NO

	PER ACRE IRRIGATED	FOR THE FARM
D. ANNUAL O & M COSTS	$ ____	$ ____
E. ANNUAL PAYMENT (INTEREST AND PRINCIPAL) REQUIRED ON COMPANY OR DISTRICT DEBT ..	____	____
F. OTHER ANNUAL CHARGES	____	____
G. TOTAL ANNUAL WATER COSTS	$ ____	$ ____

7. NUMBER OF YEARS LAND HAS BEEN IRRIGATED ____
8. EVIDENCE OF EROSION DUE TO IRRIGATION ____
9. CONDITION OF THE "ON-FARM" DISTRIBUTION SYSTEM ____
10. HAVE EXTENSION SERVICE, PRIVATE ENGINEER, OR SCS TECHNICIANS INSPECTED IRRIGATION FACILITIES? .... ☐ YES ☐ NO
    RECOMMENDATIONS MADE BY TECHNICIANS AND THEIR ESTIMATED COSTS.
11. REMARKS:

(ATTACH SUPPLEMENTAL SHEET TO DISCUSS SUGGESTED CHANGES TO IMPROVE THE PLAN OF IRRIGATION, INCLUDING INFORMATION REGARDING THE NATURE OF TOPOGRAPHY AND LOCATION OF FARM DITCHES AS RELATED TO EXPENSE, EFFICIENCY, AND ADEQUACY OF IRRIGATION. ALSO DISCUSS OTHER PERTINENT FACTORS SUCH AS ASSESSMENT DELINQUENCIES, AND RECOMMEND CROPPING SYSTEMS TO MAKE MOST EFFICIENT USE OF AVAILABLE WATER.)

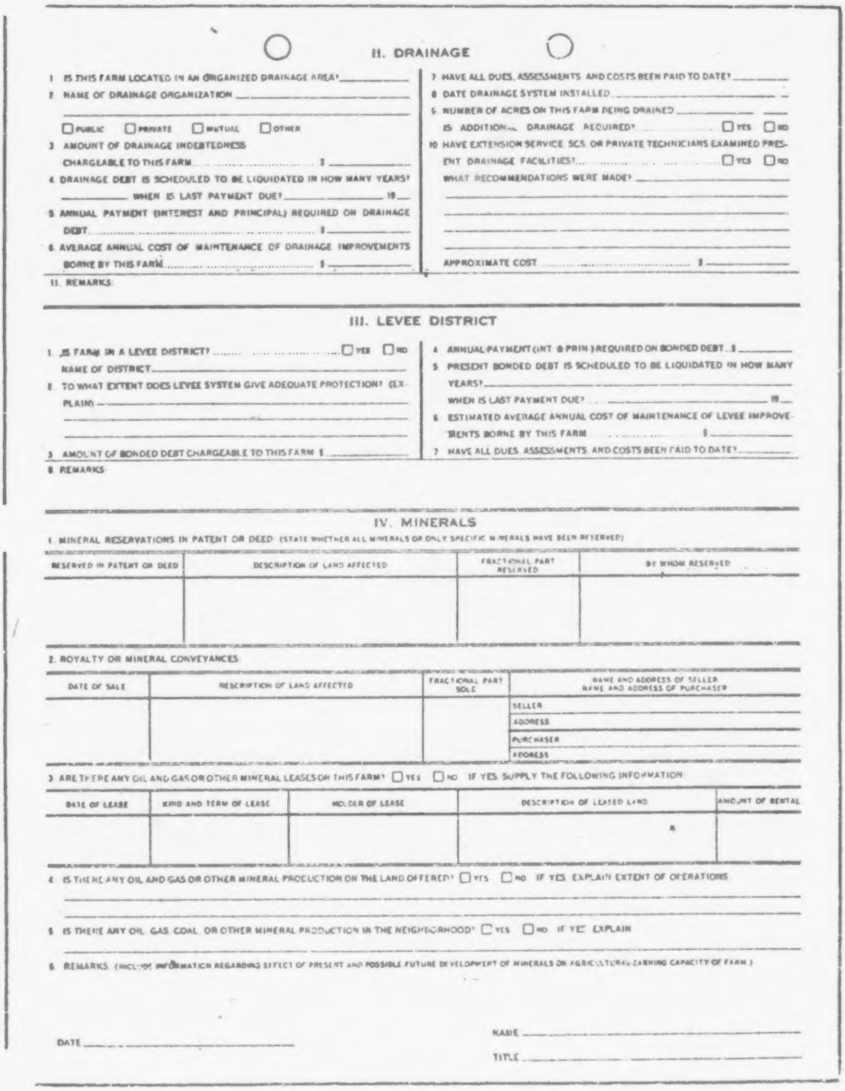
Form FHA-406A

Position 8

(SEE REVERSE)

7-25-56

FORM FHA-~~596A~~ 411-2.



II. DRAINAGE

1 IS THIS FARM LOCATED IN AN ORGANIZED DRAINAGE AREA?

2 NAME OF DRAINAGE ORGANIZATION

☐ PUBLIC ☐ PRIVATE ☐ MUTUAL ☐ OTHER

3 AMOUNT OF DRAINAGE INDEBTEDNESS CHARGEABLE TO THIS FARM $

4 DRAINAGE DEBT IS SCHEDULED TO BE LIQUIDATED IN HOW MANY YEARS? WHEN IS LAST PAYMENT DUE? 19

5 ANNUAL PAYMENT (INTEREST AND PRINCIPAL) REQUIRED ON DRAINAGE DEBT $

6 AVERAGE ANNUAL COST OF MAINTENANCE OF DRAINAGE IMPROVEMENTS BORNE BY THIS FARM $

7 HAVE ALL DUES, ASSESSMENTS AND COSTS BEEN PAID TO DATE?

8 DATE DRAINAGE SYSTEM INSTALLED

9 NUMBER OF ACRES ON THIS FARM BEING DRAINED

IS ADDITIONAL DRAINAGE REQUIRED? ☐ YES ☐ NO

10 HAVE EXTENSION SERVICE, SCS, OR PRIVATE TECHNICIANS EXAMINED PRESENT DRAINAGE FACILITIES? ☐ YES ☐ NO

WHAT RECOMMENDATIONS WERE MADE?

APPROXIMATE COST $

11. REMARKS:

III. LEVEE DISTRICT

1. IS FARM IN A LEVEE DISTRICT? ☐ YES ☐ NO

NAME OF DISTRICT

2 TO WHAT EXTENT DOES LEVEE SYSTEM GIVE ADEQUATE PROTECTION? (EXPLAIN)

3 AMOUNT OF BONDED DEBT CHARGEABLE TO THIS FARM $

4 ANNUAL PAYMENT (INT. & PRIN.) REQUIRED ON BONDED DEBT $

5 PRESENT BONDED DEBT IS SCHEDULED TO BE LIQUIDATED IN HOW MANY YEARS?

WHEN IS LAST PAYMENT DUE? 19

6 ESTIMATED AVERAGE ANNUAL COST OF MAINTENANCE OF LEVEE IMPROVEMENTS BORNE BY THIS FARM $

7 HAVE ALL DUES, ASSESSMENTS AND COSTS BEEN PAID TO DATE?

8 REMARKS:

IV. MINERALS

1 MINERAL RESERVATIONS IN PATENT OR DEED (STATE WHETHER ALL MINERALS OR ONLY SPECIFIC MINERALS HAVE BEEN RESERVED)

RESERVED IN PATENT OR DEED	DESCRIPTION OF LAND AFFECTED	FRACTIONAL PART RESERVED	BY WHOM RESERVED

2. ROYALTY OR MINERAL CONVEYANCES

DATE OF SALE	DESCRIPTION OF LAND AFFECTED	FRACTIONAL PART SOLD	NAME AND ADDRESS OF SELLER NAME AND ADDRESS OF PURCHASER
			SELLER
			ADDRESS
			PURCHASER
			ADDRESS

3 ARE THERE ANY OIL AND GAS OR OTHER MINERAL LEASES ON THIS FARM? ☐ YES ☐ NO IF YES, SUPPLY THE FOLLOWING INFORMATION:

DATE OF LEASE	KIND AND TERM OF LEASE	HOLDER OF LEASE	DESCRIPTION OF LEASED LAND	AMOUNT OF RENTAL

4 IS THERE ANY OIL AND GAS OR OTHER MINERAL PRODUCTION ON THE LAND OFFERED? ☐ YES ☐ NO IF YES, EXPLAIN EXTENT OF OPERATIONS

5 IS THERE ANY OIL, GAS, COAL, OR OTHER MINERAL PRODUCTION IN THE NEIGHBORHOOD? ☐ YES ☐ NO IF YES, EXPLAIN

6 REMARKS (INCLUDE INFORMATION REGARDING EFFECT OF PRESENT AND POSSIBLE FUTURE DEVELOPMENT OF MINERALS ON AGRICULTURAL EARNING CAPACITY OF FARM.)

DATE

NAME

TITLE

Reverse

Form FHA 422-3
(Rev. 4-17-70)

MAP OF PROPERTY

APPLICANT'S NAME ....

LEGAL DESCRIPTION

N

LEGEND	SOIL TYPE			SLOPE		EROSION
SCALE	1.	2.	3.	A. ...... TO ...... %	B. ...... TO ...... %	0 Not appreciable 1 Less than 25% 2 25 to 75% 3 Over 75%
....	4.	5.	6.	C. ...... TO ...... %	D. ...... TO ...... %	

☆GPO 767-610

Position 8

U. S. DEPARTMENT OF AGRICULTURE
Farmers Home Administration

FHA 422-3 (Rev. 4-17-70)

Form FHA 422-3
(Rev. 4-17-70)

MAP OF PROPERTY

APPLICANT'S NAME ....

LEGAL DESCRIPTION

N

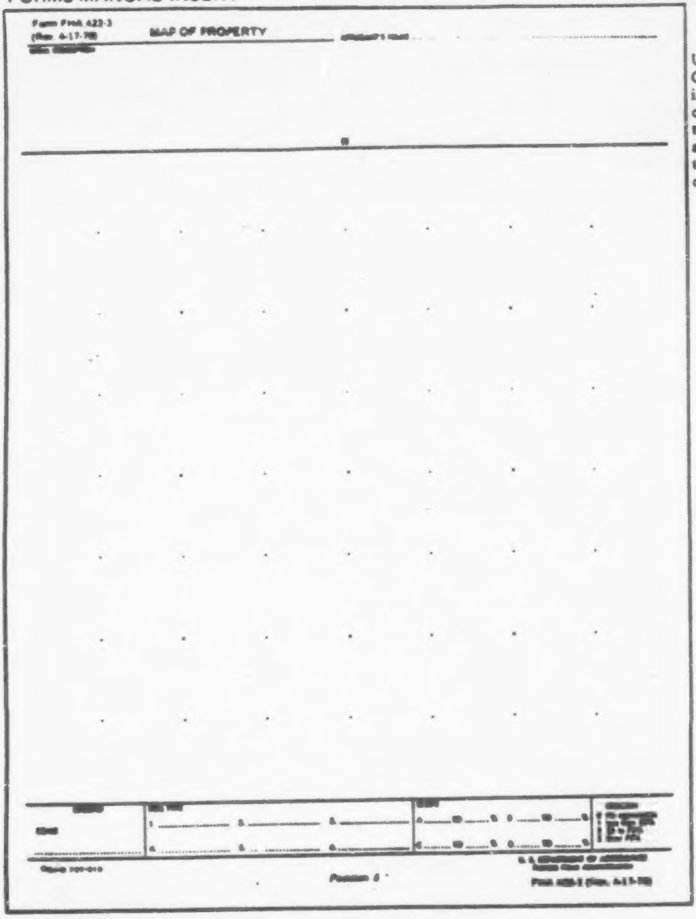
LEGEND	SOIL TYPE			SLOPE		EROSION
SCALE	1.	2.	3.	A........TO........%	B........TO........%	0 No appreciable 1 Less than 25% 2 25 to 75% 3 Over 75%
....	4.	5.	6.	C........TO........%	D........TO........%	

☆GPO 767-610

U. S. DEPARTMENT OF AGRICULTURE
Farmers Home Administration

Position 8

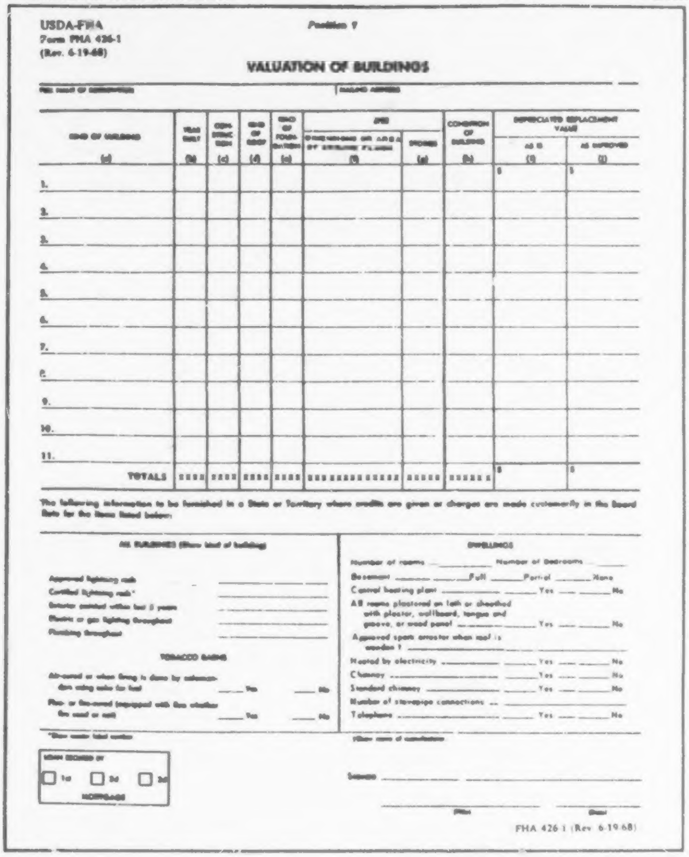
FHA 422-3 (Rev. 4-17-70)



Form FmHA 422-3
(Rev. 4-17-78)
MAP OF PROPERTY

Used by the County Committee as a guide in certifying the value of the farm, and by the County Supervisor and loan approval official to determine the soundness of the loan.

PROCEDURE FOR PREPARATION	: FmHA Instructions 422.1, 1941-A and 1965-A.
PREPARED BY	: Appraiser.
NUMBER OF COPIES	: Original only.
SIGNATURES REQUIRED	: None.
DISTRIBUTION OF COPIES	: Original to loan docket.



USDA-FHA
Form FHA 426-1
(Rev. 6-19-68)

Position 7

VALUATION OF BUILDINGS

KIND OF BUILDING (a)	YEAR BUILT (b)	CON-STRUC-TION (c)	KIND OF ROOF (d)	KIND OF FOUN-DATION (e)	SIZE: DIMENSIONS OR AREA OF GROUND FLOOR (f)	SIZE: STORIES (g)	CONDITION OF BUILDING (h)	DEPRECIATED REPLACEMENT VALUE: AS IS (i)	DEPRECIATED REPLACEMENT VALUE: AS IMPROVED (j)
1.								$	$
2.									
3.									
4.									
5.									
6.									
7.									
8.									
9.									
10.									
11.									
TOTALS	xxxx	xxxx	xxxx	xxxx	xxxxxxxxxxxxx	xxxxx	xxxxxx	$	$

The following information to be furnished in a State or Territory where credits are given or charges are made customarily in the Board Rate for the items listed below:

ALL BUILDINGS (Show kind of building)

Approved lightning rods ______
Certified lightning rods* ______
Exterior painted within last 5 years ______
Electric or gas lighting throughout ______
Plumbing throughout ______

TOBACCO BARNS

Air-cured or when firing is done by salamanders using coke for fuel ____ Yes ____ No
Flue- or fire-cured (equipped with flues whether fire used or not) ____ Yes ____ No

*Show master label number

DWELLINGS

Number of rooms ______ Number of Bedrooms ______
Basement ______ ______Full ______Partial ______None
Central heating plant ______ ______Yes ______No
All rooms plastered on lath or sheathed with plaster, wallboard, tongue and groove, or wood panel ______ ______Yes ______No
Approved spark arrestor when roof is wooden? ______
Heated by electricity ______ ______Yes ______No
Chimney ______ ______Yes ______No
Standard chimney ______ ______Yes ______No
Number of stovepipe connections ______
Telephone ______ ______Yes ______No

☐ 1st ☐ 2d ☐ 3d
MORTGAGE

FHA 426-1 (Rev. 6-19-68)

PROCEDURE FOR PREPARATION : FmHA Instructions 426.1 and 1965-A.

PREPARED BY : Employee appraising farm; if no appraisal required, by County Supervisor.

NUMBER OF COPIES : Original only.

SIGNATURES REQUIRED : Original signed by employee preparing Form.

DISTRIBUTION OF COPIES : Retained in County Office.

Used in connection with valuation of buildings on farms given as security for Farmers Home Administration (FHA) loans. Revaluations of the buildings will not be made at frequent intervals, however, when values of buildings increase or decrease materially and a revaluation of the property is necessary to protect the security interest of the FHA the County Supervisor will revise the existing Form FHA 426-1 to show the current values of the buildings. When a building is added to or removed from the farm, the County Supervisor will record the change on the existing Form FHA 426-1. Such changes will be dated and initialed by the County Supervisor and the reason for deletion will be noted on the form. Form FHA 426-1 will also be used in those cases in which a real estate appraisal is not required or the appraisal report does not indicate the minimum insurance coverage.

COMPLETION OF COLUMNS

(a) Show name of structure, such as dwelling, barn, tobacco barn, and silo. List all existing essential buildings, and any buildings to be constructed. Essential buildings include these which provide income to assure orderly repayment of the loan. If an adequate essential building can be constructed for an amount less than the depreciated replacement value of the existing building an explanation should be included in this column. Use line numbers to identify buildings shown on Form FHA 422-3, "Map of Farm."

(b) Show the approximate year building was built when exact year is not known.

(c) Use symbols as follows for construction:

F - Frame
B - Brick
BV - Brick veneer
RE - Rammed earth
C - Concrete or cement
M - Metal or ironclad
A - Adobe
S - Stone
SV - Stone veneer
CB - Concrete block

If construction is other than that for which symbols are given, write out in full.

(d) Use symbols as follows for kind of roof:

M - Metal
S - Slate
T - Tile
AS - Asphalt shingles
WS - Wood shingles
B - Board
TP - Tar paper
ASB - Asbestos shingles
C/A - Approved composition shingles
FR - Felt roll roofing
RR - Rubberoid
BU - Built-up roofing

(e) Use symbols as follows for foundation:

WP - Wood piers
MP - Masonry piers
CP - Concret piers
SM - Solid continuous masonry (brick, stone, or concrete), excluding porches.

(f) Show dimensions - length and width in feet. Do not show inches. Silo - show diameter and height.

(g) Show the number of stories of the building

(h) Show the condition of the building as "good," "fair," or "poor."

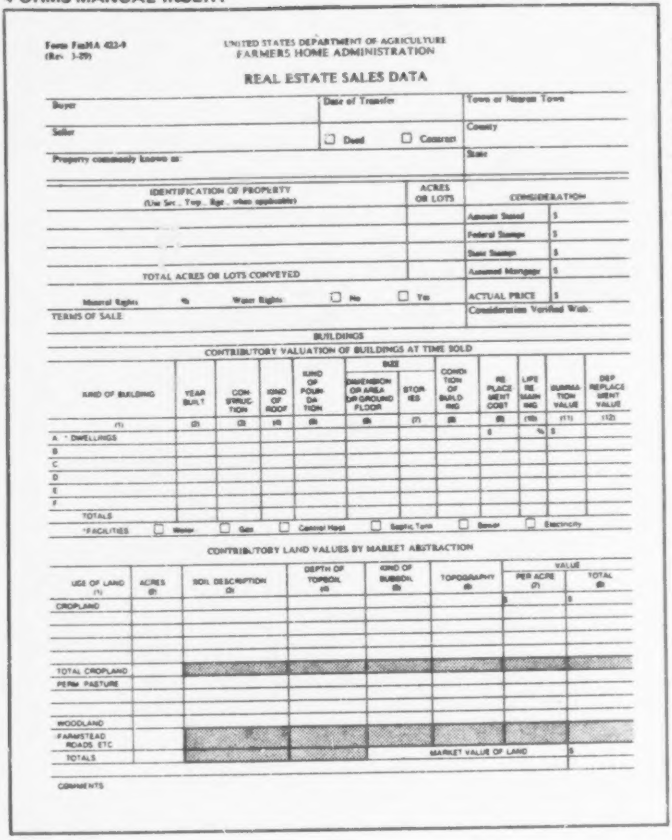
* (i) The amount shown in the "AS IS" column must reflect as nearly as possible the lesser of (1) the Depreciated Replacement Value of each existing building list on Form FHA 426-1 prior to any improvements, or (2) the cost of adequate essential buildings which can be constructed for less than the depreciated replacement value of the existing buildings. Round off the amounts to the nearest $100.

* (j) The amount shown in the "AS IMPROVED" column must reflect as nearly as possible the lesser of (1) the Depreciated Replacement Value of each building listed on Form FHA 426-1 after the planned repairs, improvements, or construction have been completed (including buildings not to be repaired or improved), or (2) the cost of adequate essential buildings which can be constructed for less than the depreciated replacement value of the existing buildings. Round off the amounts to the nearest $100.

Columns (d) through (h) will reflect the characteristics of the building after planned improvements have been made.

* The Depreciated Replacement Value of a building in columns (i) and (j) will be figured on current labor cost and the current cost of materials of like kind and quality used in the building with deduction for the actual physical depreciation.

FORMS MANUAL INSERT **FORM FmHA 422-9**



Form FmHA 422-9
(Rev. 3-89)

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

REAL ESTATE SALES DATA

Buyer	Date of Transfer	Town or Nearest Town
Seller	☐ Deed ☐ Contract	County
Property commonly known as:		State

IDENTIFICATION OF PROPERTY (Use Sec., Twp., Rge., when applicable)	ACRES OR LOTS	CONSIDERATION	
		Amount Stated	$
		Federal Stamps	$
		State Stamps	$
TOTAL ACRES OR LOTS CONVEYED		Assumed Mortgage	$
Mineral Rights % Water Rights: ☐ No ☐ Yes		ACTUAL PRICE	$
TERMS OF SALE		Consideration Verified With:	

BUILDINGS

CONTRIBUTORY VALUATION OF BUILDINGS AT TIME SOLD

KIND OF BUILDING	YEAR BUILT	CONSTRUCTION	KIND OF ROOF	KIND OF FOUNDATION	SIZE		CONDITION OF BUILDING	REPLACEMENT COST	LIFE REMAINING	SUMMATION VALUE	DEP REPLACEMENT VALUE
					DIMENSION OR AREA OF GROUND FLOOR	STORIES					
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
A *DWELLINGS								$	%	$	
B											
C											
D											
E											
F											
TOTALS											

*FACILITIES ☐ Water ☐ Gas ☐ Central Heat ☐ Septic Tank ☐ Sewer ☐ Electricity

CONTRIBUTORY LAND VALUES BY MARKET ABSTRACTION

USE OF LAND (1)	ACRES (2)	SOIL DESCRIPTION (3)	DEPTH OF TOPSOIL (4)	KIND OF SUBSOIL (5)	TOPOGRAPHY (6)	VALUE	
						PER ACRE (7)	TOTAL (8)
CROPLAND						$	$
TOTAL CROPLAND		▨	▨	▨	▨	▨	▨
PERM PASTURE							
WOODLAND							
FARMSTEAD ROADS ETC		▨	▨	▨	▨	▨	▨
TOTALS		▨	▨	MARKET VALUE OF LAND			$

COMMENTS

Used by county office personnel to record and keep information regarding real estate sales in the community. This information may be used as an aid in establishing the value of property being appraised by FmHA appraisal personnel.

PROCEDURE FOR PREPARATION	: FmHA Instructions 422.1.
PREPARED BY	: Appraisal personnel.
NUMBER OF COPIES	: Original only.
SIGNATURES REQUIRED	: None.
DISTRIBUTION OF COPIES	: Original to be retained in the County Office in a binder maintained for this purpose

-2- (FMI - Form FmHA 422-9)

GENERAL INSTRUCTIONS

To be used to record and keep information regarding real estate sales in the community. This information may be used as an aid in establishing the value of property being appraised by FmHA appraisal personnel.

County Office employees who have knowledge of real estate sales which could be used for comparative purposes in real estate appraisals will initiate use of the form. They will record the names of the buyers and the sellers to provide appraisal personnel leads for follow-up information. Knowledge of the sales may be obtained from newspapers, personal contacts, and other sources.

Appraisal personnel will complete the form in sufficient detail to provide the information needed for evaluating the sale when it is to be used as a specific comparable.

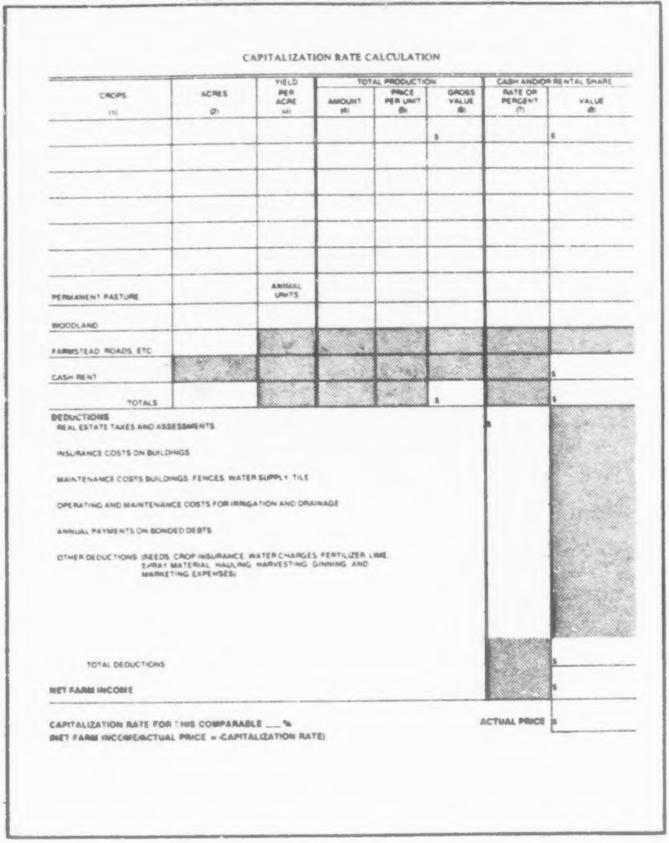
Appraisal personnel may determine the grouping of forms which best suits their individual needs. For example: the forms could be grouped by type of farming operation, town or locality, and area.

The front side of this form provides for a description of the nature of the sales transaction and pertinent facts regarding the sale under "Comments."

The back of the form is designated to calculate the capitalization rate for the comparable.

In addition to the information provided on this card the Appraisal personnel will attach other information to this card such as, ASCS photographs, location map, pictures of the property and improvements, a complete legal description, and any other pertinent information that could have an effect on the comparables market value.

REVERSE OF FORM FmHA 422-9



CAPITALIZATION RATE CALCULATION

CROPS (1)	ACRES (2)	YIELD PER ACRE (3)	TOTAL PRODUCTION			CASH AND/OR RENTAL SHARE	
			AMOUNT (4)	PRICE PER UNIT (5)	GROSS VALUE (6)	RATE OR PERCENT (7)	VALUE (8)
					$		$
PERMANENT PASTURE		ANIMAL UNITS					
WOODLAND							
FARMSTEAD ROADS ETC		▨	▨	▨	▨	▨	▨
CASH RENT	▨	▨	▨	▨	▨	▨	$
TOTALS		▨	▨	▨	$	▨	$

DEDUCTIONS REAL ESTATE TAXES AND ASSESSMENTS	$	▨
INSURANCE COSTS ON BUILDINGS		▨
MAINTENANCE COSTS BUILDINGS FENCES WATER SUPPLY TILE		▨
OPERATING AND MAINTENANCE COSTS FOR IRRIGATION AND DRAINAGE		▨
ANNUAL PAYMENTS ON BONDED DEBTS		▨
OTHER DEDUCTIONS (SEEDS CROP INSURANCE WATER CHARGES FERTILIZER LIME SPRAY MATERIAL HAULING HARVESTING GINNING AND MARKETING EXPENSES)		▨
TOTAL DEDUCTIONS	▨	$
NET FARM INCOME	▨	$

CAPITALIZATION RATE FOR THIS COMPARABLE ___ %
(NET FARM INCOME/ACTUAL PRICE = CAPITALIZATION RATE)

ACTUAL PRICE $

USDA-FmHA
Form FmHA 1922-11
(4-86)

APPRAISAL FOR MINERAL RIGHTS

I. GENERAL INFORMATION

A. OWNER	B. ADDRESS	C. DATE

D. LEGAL DESCRIPTION

E. ACREAGE

1. Cropland ____________
2. Pasture ____________
3. Other ____________
4. TOTAL ____________

F. MINERAL SITUATION

1. In Production:

2. Potential:

G. OTHER INFORMATION

II. INCOME APPROACH

A. RECENT ANNUAL PRODUCTION AND INCOME DATA *(If in production)*

YEAR	UNITS	PRICE	ROYALTY RATE	GROSS RETURN
19		$		$
19				
19				
19				
19				
			AVERAGE GROSS RETURN	$
			AVERAGE ANNUAL EXPENSE .... (–)	$
			AVERAGE NET INCOME	$

B. FUTURE ANNUAL PRODUCTION AND INCOME *(Expected)*

YEAR	UNITS	PRICE	ROYALTY RATE	GROSS RETURN
19		$		$
19				
19				
19				
19				
19				
19				
			AVERAGE GROSS RETURN	$
			AVERAGE ANNUAL EXPENSE .... (–)	$
			AVERAGE NET INCOME	$

5070

132

II. (Continued)

1. *Capitalization of Net Income Value.

(Net Income) $ ____________ divided by (Capitalization Rate) ____________ % = $ ____________

2. **Present Value of future income.

YEAR	UNITS	PRICE	ROYALTY	AVERAGE ANNUAL COST	NET INCOME	DISCOUNT	PRESENT VALUE
19		$	$	$	$	$	$
19							
19							
19							
19							
19							

Present Value of future income .... = (Total) $

C. INCOME VALUE (Total(s) from B1 and/or B2) .... = $ ____________

III. COMPARABLE SALES APPROACH TO VALUE

(Comparable sales - Describe and analyze any sale of comparable property.)

A.

B.

C.

**Use if net income is long-term and relatively constant.*

***Use if net income is short-term and variable year-to-year. Income* $\frac{\text{1st yr. N.I.}}{(1+r)} + \frac{\text{2nd yr. N.I.,}}{(1+r)^2}$ *etc., for discount. Such factors can be used if the same discount rate or r is used for all years.*

IV. OTHER INFORMATION APPROACH TO VALUE

(Other information indicating value-statistical studies, etc.)

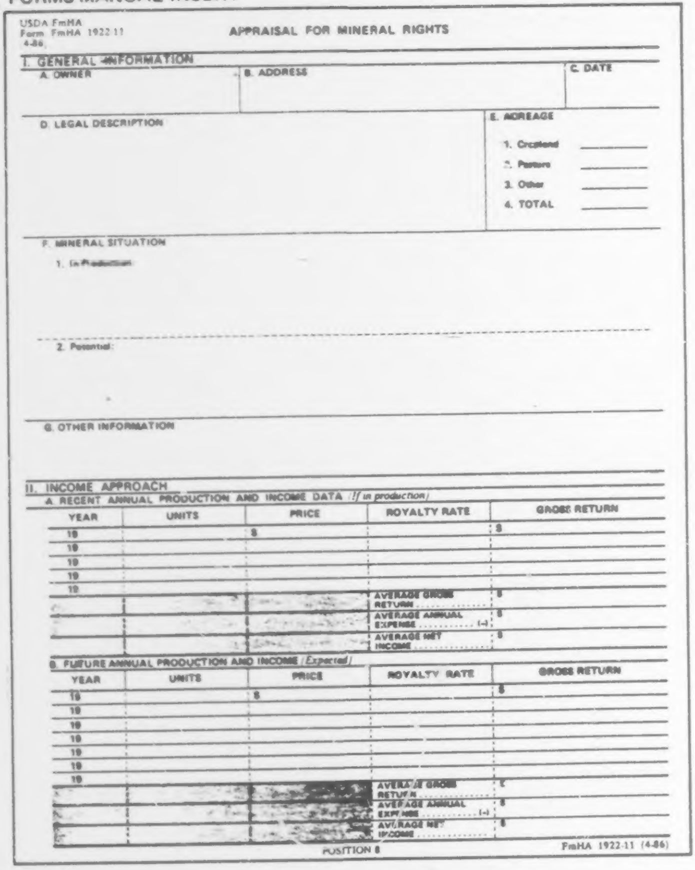
V. SYNTHESIS–VALUE			VI. APPRAISED VALUE
PART II C	Income	$	$
PART III	Sales	$	
PART IV	Other	$	

VII. COMMENTS AND INTERPRETATION

NAME	TITLE	DATE

FORMS MANUAL INSERT

FORM FmHA 1922-11



USDA FmHA
Form FmHA 1922-11
4-86

APPRAISAL FOR MINERAL RIGHTS

I. GENERAL INFORMATION

A. OWNER

B. ADDRESS

C. DATE

D. LEGAL DESCRIPTION

E. ACREAGE

1. Cropland ________
2. Pasture ________
3. Other ________
4. TOTAL ________

F. MINERAL SITUATION

1. In Production:

2. Potential:

G. OTHER INFORMATION

II. INCOME APPROACH

A. RECENT ANNUAL PRODUCTION AND INCOME DATA *(If in production)*

YEAR	UNITS	PRICE	ROYALTY RATE	GROSS RETURN
19		$		$
19				
19				
19				
19				
			AVERAGE GROSS RETURN	$
			AVERAGE ANNUAL EXPENSE .... (-)	$
			AVERAGE NET INCOME	$

B. FUTURE ANNUAL PRODUCTION AND INCOME *(Expected)*

YEAR	UNITS	PRICE	ROYALTY RATE	GROSS RETURN
19		$		$
19				
19				
19				
19				
19				
19				
			AVERAGE GROSS RETURN	$
			AVERAGE ANNUAL EXPENSE .... (-)	$
			AVERAGE NET INCOME	$

POSITION 8

FmHA 1922-11 (4-86)

Prepared by appraiser to determine appraised value of mineral rights.

(see reverse)

PROCEDURE FOR PREPARATION : FmHA Instruction 422.1.

PREPARED BY : Appraiser.

NUMBER OF COPIES : Original only.

SIGNATURE REQUIRED : Appraiser.

DISTRIBUTION OF COPIES : To loan docket.

II. (Continued)

1. *Capitalization of Net Income Value.

(Net Income) $ __________ divided by (Capitalization Rate) __________ % = $ __________

2. **Present Value of future income.

YEAR	UNITS	PRICE	ROYALTY	AVERAGE ANNUAL COST	NET INCOME	DISCOUNT	PRESENT VALUE
19		$	$	$	$	$	$
19							
19							
19							
19							
19							

Present Value of future income .... = (Total) $

C. INCOME VALUE (Total(s) from B1 and/or B2) .... = $ __________

III. COMPARABLE SALES APPROACH TO VALUE

(Comparable sales - Describe and analyze any sale of comparable property.)

A.

B.

C.

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*Use if net income is long-term and relatively constant.

**Use if net income is short-term and variable year-to-year. Income $\frac{\text{1st yr. N.I.}}{(1+r)} + \frac{\text{2nd yr. N.I.}}{(1+r)^2}$ etc., for discount. Such factors can be used if the same discount rate or r is used for all years.

-3- (FMI - Form FmHA 1922-11)

IV. OTHER INFORMATION APPROACH TO VALUE

(Other information indicating value—statistical studies, etc.)

V. SYNTHESIS—VALUE	VI. APPRAISED VALUE
PART II C .... Income $__________ PART III .... Sales $__________ PART IV .... Other $__________	$__________

VII. COMMENTS AND INTERPRETATION

NAME	TITLE	DATE

PREPARED STATEMENT [LETTER] OF JAMES T. MASSEY, EXECUTIVE DIRECTOR, FARMERS' LEGAL ACTION GROUP, INC., SISTERS, OR

DEAR SENATOR CONRAD: We are writing in response to your office's request for information regarding the Farmers Home Administration's implementation of the Agricultural Credit Act of 1987 (the "Credit Act"). On behalf of the FmHA farmer program borrowers we represent, we thank you for your interest in ensuring that the provisions of the Credit Act are fairly implemented by FmHA.

Farmers' Legal Action Group (FLAG) is a nonprofit law firm representing farmers and ranchers around the country. The attorneys on our staff have been actively involved in FmHA issues for the past 6 years. Jim Massey and I represented a national class of approximately 230,000 FmHA farmer program borrowers in the *Coleman* v. *Lyng* lawsuit against the agency. That lawsuit effectively prevented FmHA from foreclosing or liquidating farmer program borrowers for most of the last 5 years. FLAG has also represented FmHA farmer program borrowers in several other class action lawsuits. Congress addressed many of the issues raised in this litigation through the passage of the Credit Act.

FLAG staff also travel all over the country speaking at training sessions for farmers, ranchers, and their advocates and lawyers. These events have been sponsored locally by 88 different organizations; some have been national farm groups, some church or legal organizations, and some local, grassroots organizations. Total attendance at these gatherings has been 12,743; of these, 8,158 have been farmers, 2,706 lawyers, 1,228 advocates, and 651 a mix of public officials and interested citizens. At these training seminars, we have received a great deal of information about how FmHA is implementing its programs in various parts of the country.

In addition to the training seminars, we receive information about FmHA's activities from farmers, ranchers, and their lawyers and advocates through the hundreds of telephone calls we receive. We provide backup support and advice and analysis for attorneys and advocates representing farmers around the country.

Our organization also provides legal education materials which are available to farmers and ranchers and their lawyers and advocates. The materials we have produced that relate to FmHA are three editions of *Farmers' Guide to FmHA;* the *Farm Survival Handbook* and its accompanying VHS videotape; and a series of articles in our bimonthly newsletter, *Farmers' Legal Action Report,* including the "Special Report" on the Agricultural Credit Act of 1987. The *Farm Survival Handbook* was written and published at the time the notices implementing the Credit Act were sent to 70-80,000 FmHA borrowers across the country in late November 1988. Within a 3-week period we sold nearly 18,000 copies of the *Farm Survival Handbook* and approximately 1,300 videos to farmers who were affected by the notice forms and to farm organizations assisting FmHA borrowers.

After providing technical assistance to the staff in your office and other Senators' offices during the markup of the Credit Act, we submitted extensive comments in June 1988 on FmHA's proposed regulations implementing the Credit Act. As a result of our comments, many improvements were made in the various regulations before they were published in interim/final form and became effective.

In this letter I will discuss the problems that have arisen which relate to FmHA's implementation of:

(1) The primary loan servicing or debt restructuring program;

(2) The preservation loan servicing or homestead protection and farmland leaseback/buyback programs;

(3) Release of income for payment of essential living and operating expenses;

(4) Restructuring of guaranteed loans;

(5) The new appeal procedure; and

(6) FmHA's participation in mediation.

For each of the areas discussed, I will highlight the specific issues and what the statute and regulations may say about these issues, and I will suggest recommendations on how these problems could be resolved.

It should be noted here that most of the problems we have identified with FmHA's implementation of the Credit Act result from administrative action, interpretation, or omissions by the agency or its personnel, and not from language in the Credit Act itself. Thus, most of the problems can be remedied by FmHA through administrative action or formal rulemaking. We would hope that the committee would urge FmHA officials to take the recommended actions.

I. PRIMARY LOAN SERVICING OR DEBT RESTRUCTURING

In order to determine whether a farm program borrower is eligible for primary loan servicing—which is sometimes called debt restructuring—FmHA will be using the DALR$ computer program. This program is designed to make the necessary calculations to determine whether the borrower can cash-flow a restructured loan with a net present value at least equal to the net recovery value of the collateral for the loan. The computer program will calculate the net recovery value of the collateral; it also calculates the net present value of the restructured loan.

To calculate the net present value of the restructured loan, the program calculates the effect on the amount of payment the borrower would have to make if the loan is restructured by using rescheduling, reamortization, limited resource interest rates, consolidation, deferral, conservation easements, softwood timber, and/or a principal and interest write-down. The net recovery value is calculated by taking the appraised value of the collateral for the loan and subtracting from that value any liens prior to FmHA's lien on the collateral and all of the expenses and costs FmHA would incur in an attempt to collect on the loan by foreclosing and then reselling the collateral property.

In order to determine whether the borrower could afford to make the annual payments if the loan is restructured using any combination of the loan servicing programs, the amount available for payment of FmHA debt is taken from the borrower's Farm and Home Plan or other cash-flow plan.

There are several categories of problems related to FmHA's implementation of primary loan servicing or debt restructuring provisions of the Credit Act and its use of the DALR$ computer program. The problem areas that will be discussed in this letter include:

(1) FmHA's failure to make the computer program accessible to the public;
(2) Problems with the net recovery value calculations;
(3) Problems related to the development of the farmer's cash-flow plans;
(4) Problems related to the calculations performed by the DALR$ computer program; and
(5) Miscellaneous matters.

A. FMHA'S FAILURE TO MAKE DALR$ ACCESSIBLE TO THE GENERAL PUBLIC

ISSUE

The DALR$ computer program was not made available to the general public at all during the period in which FmHA was accepting comments to the proposed regulations that incorporated the computer program. On September 14, 1988, FmHA did publish interim rules implementing the Credit Act, which contained a written description of the what the computer program supposedly does. However, it was still weeks after the September 14, 1988 interim rules were published before the general public could obtain copies of the disks for the DALR$ program. It was not until December 1988 that these disks were finally made available to our office and other organizations that had requested them. This was long after the comments to the September 14, 1988 interim rules were due. Therefore, there was no opportunity for the general public to comment on the actual program itself before it was put online and used to determine the fate of FmHA borrowers.

Once organizations obtained copies of the computer disks, it became apparent that without purchasing special, expensive AT&T UNIX System computers, virtually no one would be able to run the DALR$ program. The cost of these computers, with necessary software to run the DALR$ program, is at least $13,000. The DALR$ program also appears to have been written in such a form to make the accessibility of the program most difficult. It is written in four different computer languages with extremely complex source codes.

Because FmHA refused to issue the DALR$ computer disks early in the development of the regulations, and because of the way the program is written which makes it very difficult to obtain access, to our knowledge no one outside FmHA has been able to thoroughly analyze the program to ensure that it actually does what FmHA claims it does and that it complies with the language and intent of the debt restructuring provisions of the Credit Act. However, our consultants, to date, have concluded that the program and the regulations fail to satisfy general industry or Government standards for custom software development. We are now in the process of analyzing the operation of the program itself, at great expense to our organization.

Due to the failure of FmHA to make the DALR$ program accessible to the general public, farmers have been unable to use the program to assist them in developing their farm plans that will be used in the restructuring process. They have also been and will continue to be unable to adequately check whether FmHA has properly run all of their figures through the DALR$ computer program in determining whether or not they are eligible for the restructuring.

LEGAL ANALYSIS

Section 624 of the Credit Act required that FmHA publish final regulations after considering public comment pursuant to § 553 of the Administrative Procedure Act. It is clear from this section of the Credit Act that Congress intended the public to have an opportunity to thoroughly comment on FmHA's planned implementation of the debt restructuring provisions of the Credit Act prior to the procedures becoming effective. FmHA's failure to ensure that the DALR$ computer program, which will ultimately be making the determination as to whether a borrower is eligible or not, was accessible to the public during the comment period violates this section of the Credit Act.

RECOMMENDATION

To ensure better public access to the DALR$ program, FmHA should rewrite the program so it is compatible with a wide range of computer systems to which farm organizations, community groups, or farmers and ranchers may have access. This will allow easier analysis of the program and will also allow individual farmers to use the program in their planning process as well as in the appeal and review process. We have learned that the program could have been written in the DOS operating system, which is in wide circulation. FmHA should do this now.

In addition, FmHA should agree to rerun all DALR$ restructuring calculations after it has published for notice and comment the entire source code of the program, the operating handbook, and the underlying rationale, and has adopted final regulations.

As the committee knows, FmHA has taken enormous license in recent years with its obligations under the Administrative Procedure Act to publish regulations in proposed form for public comment. The agency has delayed required rules, or even refused to publish them at all, on occasions when it disagreed with congressional directives. The best recent example of this tactic is FmHA's refusal to implement Mr. Whitten's operating loan continuation policy contained as a rider to a supplemental appropriations bill in July 1987 until after the entire 1988 operating loan season had passed.

On the other hand, the agency has published "hurry up" regulations, even without legislative authority, when it suits the agency's agenda. The best example of this was the implementation, by regulation alone, of the "debt set-aside" program announced in mid-October 1984.

Once again, the agency has, through its handling of the DALR$ matter, sought to rewrite the requirements of the Administrative Procedure Act. Unless FmHA agrees to remedy this problem administratively, litigation may be required to halt Government liquidation or foreclosure of those FmHA borrowers who are denied primary loan servicing based on the DALR$ outcome.

B. Problems With Net Recovery Value Calculation

The DALR$ computer program calculates the net recovery value. This is a very key figure in determining a borrower's eligibility for debt restructuring because it establishes the lowest level at which FmHA can restructure the loan. There are several problems relating to FmHA's calculation of the net recovery value. Each of these problems is discussed below.

First, however, it is important to note the statutory language regarding net recovery value calculation.

LEGAL ANALYSIS

Section 616 of the Credit Act, codified at 7 U.S.C. § 2001, states:

RECOVERY VALUE.—For the purpose of paragraph (1), the recovery value of the collateral securing the loan shall be based on—

(A) The amount of the current appraised value of the property securing the loan; less

(B) The estimated administrative, legal, and other expenses associated with liquidation and disposition of the loan and collateral, including—

(i) The payment of prior liens;

(ii) Taxes and assessments, depreciation, management costs, the yearly percentage decrease or increase in the value of the property, and lost interest income, each calculated for the average holding period for the type of property involved;

(iii) Resale expenses, such as repairs, commissions and advertising; and

(iv) Other administrative and attorneys costs.

When FmHA issued its September 14, 1988 interim regulations, it published guidelines for determining adjustments for the net recovery value of the collateral. These guidelines require that the State Director use specific procedures to determine costs and expenses related to foreclosure and liquidation and resale of collateral property which would apply statewide. It also gave guidance for the County Supervisors to use in determining expenses that are of a more localized nature.

It is obvious from the language of the statute that Congress intended FmHA to include in the net recovery value calculations all expenses and costs it would incur if it were to foreclose and liquidate the farming operation. This was intended to give FmHA an accurate picture of the amount it would actually recover on that loan if FmHA used the foreclosure process rather than the debt restructuring process. Unfortunately, there are several problems with the way FmHA is doing these calculations that indicate it may not obtain an accurate reflection of the amount it would receive if it tried to collect on the loan through foreclosure rather than restructuring. These problems are discussed below.

Issue No. 1. In calculating the real estate taxes that should be subtracted from the appraised value, FmHA fails to take into account that existing real estate taxes may be based on homestead credits that are used in the State. If FmHA took the property into its inventory, it would be paying higher taxes than the borrower/owner who lives on the property has been paying since FmHA will not be eligible for the homestead credit on the real estate taxes. When FmHA uses the actual taxes the borrower would have to pay, it may be underestimating the cost of real estate taxes FmHA would have to pay if the property was foreclosed and held in its inventory.

Issue No. 2. FmHA does not consider the effect that the placement of conservation easements on inventory land may have on the overall value of the property. According to FmHA regulations if the farmland were to be taken into FmHA's inventory through foreclosure action, FmHA must consider whether the property contains wetland, flood plains, and/or highly erodible lands. If it does, FmHA will consider giving a conservation easement on that land to other State or Federal agencies. This placement of the easement will include deed restrictions on the identified wetland, flood plain and/or highly erodible land, which will severely restrict the use of that property by any future purchaser. The placement of these deed restrictions will have a significant effect on the overall value of the property. In most instances it is likely to reduce the value of that property as farmland since conservation easements will have a significant impact on the profitability of the land as farmland. Since FmHA's regulations require that these conservation easements be placed on the property if it is taken into inventory, in calculating the net recovery value for purposes of debt restructuring FmHA should be taking into account whether there are wetlands, flood plains, and/or highly erodible land that would be covered by a conservation easement if the property were foreclosed on and became part of FmHA inventory. Only by taking these potential easements into consideration will FmHA get an accurate picture of what it would actually collect if the property were foreclosed and liquidated. It is important to note that, under FmHA's current policies, if the borrower were willing to voluntarily convey the real estate, FmHA would consider the devaluation of the property caused by any conservation easements that would have to be placed on that property.

Issue No. 3. There is also some question as to how the State Directors establish the cost and expense figures that are to be used statewide in calculating the net recovery value. For example, there appears to be a great disparity between the States on the numbers that are being used. In addition, the numbers may have been changed on several occasions during the course of FmHA's processing of borrowers' debt restructuring calculations.

For example, in the State of Minnesota, according to a November 25, 1988 Administrative Notice (AN), the average holding period for real estate was listed as 15 months. On January 10, 1989, the average holding period was changed to 30 months. Also, the November 25, 1988 AN listed management charges at $1.68 per acre. On January 10, 1989, those management charges were changed to $20.16 per acre. On February 8, 1989, these management changes were again changed to:

(a) $1,360/unit/year.—Specialized units with buildings and less than 40 acres.
(b) $20/acre/year.—40–100 acres with buildings.
(c) $7.50/acre/year.—100–300 acres with buildings.
(d) $2.50/acre/year.—300+ acres or smaller bareland tracts.

These changes in the figures to be used in calculating the net recovery value may have a very significant impact on whether a borrower will be able to demonstrate that he/she can cash-flow a restructured loan with the net present value at least equal to that net recovery value.

Whether these figures were rationally based on actual data is highly questionable where, as here, they are changed so dramatically over the course of a few months' time. These changes raise the question of which figures should have been used for an individual borrower's net recovery value calculation. And in none of the Minnesota AN's were the county offices required to *recalculate* the net recovery values using the revised figures. Thus, farmers whose applications were processed in December 1988 were faced with a set of numbers entirely different from those used in January and February 1989.

Issue No. 4. FmHA has stated that for chattel property there will be no holding period figure used in the calculations. This is because FmHA claims that it rarely acquires chattel property. One of the reasons that FmHA has rarely acquired chattel property in the last several years is that it was prevented from doing so because of the *Coleman* v. *Lyng* litigation. This certainly does not mean that if FmHA begins liquidation actions, it will not be acquiring chattel property in the future. FmHA must make some determination as to how long it would take for it to sell various types of chattel property if it were to acquire such property, since the statute requires consideration of this cost. These periods then should be used in the net recovery value calculation formula.

Issue No. 5. It is also not clear whether FmHA is figuring separate attorneys' costs and legal costs for a real estate foreclosure action and a chattel security replevin action. For example, in the State of Minnesota there is one listing for an attorney cost, and it is not clear whether this is for real estate foreclosure alone or whether it involves a chattel security replevin action as well. And it is a fixed figure, which does not accurately represent the Government's cost in many cases. No effort is made to accurately estimate the actual attorneys' fees cost that would occur in an individual borrower's case.

Issue No. 6. In subsection D of exhibit J to subpart S of part 1951 of the September 14, 1988 regulations, it states that FmHA calculates the net recovery value for chattel security property and real estate property separately. However, the total sum of all of the various net recovery value calculations will be added together and the borrower is provided with only one net recovery value. It appears that this one total net recovery value will be what the computer is searching for in trying to find a formula for restructuring the borrower's various loans.

Unless the borrower's operating and real estate loans are all cross-collateralized, using just one net recovery value figure in the DALR$ program may not accurately reflect the amount FmHA could collect on each loan by liquidating the collateral for that loan.

For example, a farmer might have operating loans secured only by chattel and a farm ownership loan secured only by a mortgage on the real estate. This farmer's chattel may be worth far less than the operating debt, while at the same time the value of the real estate may be considerably more than the farm ownership debt.

In this instance, by using the one combined net recovery value for both chattel and real estate, FmHA is effectively saying that it could apply the excess value of the real estate to the operating debt and, therefore, it will consider that excess real estate value when determining how much of a write-down the farmer may receive on the operating debt. Combining the net recovery values for separate loan types is directly contrary to the language of the Credit Act, which refers to "the recovery value of the *collateral securing the loan.*" *See* § 615(c)(2) of the Credit Act.

RECOMMENDATION

FmHA should be required to change its calculation formulas for net recovery values to more accurately reflect what it would actually collect if it used a foreclosure and liquidation process rather than a restructuring process. This would include FmHA using more realistic figures with regard to real estate taxes, which would take into account that FmHA would not be entitled to the homestead credits on those taxes. It would also include taking into account whether conservation easement deed restrictions would be placed on the property if the property were foreclosed on and resold.

There should also be national office review of all of the figures and data on which the net recovery value figures were calculated by the State offices. This is to verify that the figures were based on some rational survey or study.

FmHA should also be required to calculate whether a farmer can cash-flow a restructured loan with a net present value at least equal to the net recovery value for each loan or group of loans secured by separate collateral. FmHA should be prohibited from using combined net recovery values for chattel and real estate when the farmer's loans are not cross-collateralized.

C. APPRAISALS

ISSUE

The appraisal value of the collateral property is a key figure in the whole debt restructuring consideration because it is the beginning point for the net recovery value calculation. Many farmers believe that FmHA is using unrealistically high appraisal figures in its debt restructuring considerations. These appraisals may be unreasonably high due to the comparable sale figures that FmHA uses. On many occasions farmers have found that FmHA has used comparable sale figures in its appraisals that did not accurately reflect the type of property the farmer owned.

In addition, there have been reports of FmHA requiring its contract appraisers to increase their appraisal figures simply because FmHA says they are too low. According to subsection D of exhibit J to subpart S of part 1951 of the September 14, 1988 regulations, FmHA is using the market value of the security when figuring the net recovery value for purposes of debt restructuring. Using the market value may give FmHA a figure that does not accurately reflect what it would recover if it foreclosed and resold the property, since FmHA is statutorily prohibited from selling farmland for anything higher than a price which reflects what the property will produce by being farmed (capitalization value).

Many farmers have also questioned whether FmHA's capitalization value formula accurately reflects what their land can produce through farming.

LEGAL ANALYSIS

FmHA is prohibited from selling inventory farmland for a price that is greater than what the property could produce by being farmed. *See* 7 U.S.C. § 1985(e). FmHA calls this value the capitalization value. Even though FmHA's September 14, 1988 regulations acknowledge that farmland inventory will be sold for the lesser of the market value or the capitalization value, it uses only the market value when calculating the net recovery value for purposes of restructuring. In instances in which the capitalization value would be less than the market value, this will inaccurately reflect what FmHA could acquire through foreclosure and liquidation of the real estate and, as such, will violate the intent of the debt restructuring provisions of the Credit Act.

Since FmHA's current appraisal procedures require that both the market value and the capitalization value be determined, it would be easy for FmHA to automatically look at which of the two values is lower. The lower value should be used in the net recovery value calculation.

RECOMMENDATIONS

FmHA should be required to use the lower of the market value or capitalization value when determining the net recovery value for purposes of debt restructuring. This will allow a more accurate reflection of what FmHA would acquire if the property were foreclosed on and resold.

A study should be conducted to determine whether FmHA's capitalization formula and capitalization rates accurately reflect what land will produce by being farmed. This study should include expert appraiser input and review from experts outside FmHA.

D. PROBLEMS WITH THE DEVELOPMENT OF FARMERS' CASH-FLOW PLANS

ISSUES

The farmer's Farm and Home Plan or other cash-flow plan also plays a key role in the debt restructuring determination. It is from these cash-flow plans that FmHA determines how much the farmer will have available to pay on the FmHA debt. To determine how much the borrower has available to pay toward the FmHA debt, FmHA calculates the amount of income the borrower will have for the year and subtracts from that the living operating expenses and payments due to other non-FmHA creditors. The resulting figure will give FmHA a figure that will be used in the DALR$ computer run as the balance available to be paid on FmHA debt.

There is a variety of problems related to the figures FmHA is requiring borrowers to use on these cash-flow plans. It should be noted that if the borrower is going to be considered for a deferral on one or more of his/her loans, he/she must provide FmHA with a plan for the 1989 crop-year as well as a projected plan for the year after the deferral has ended. This is often a plan for the year 1993 or 1994.

The prices that will be used on the 1989 plan as well as the long-term plan are obviously key factors in the ultimate calculation of the balance available for the payment of FmHA debt. Unfortunately, farm advocates and lawyers have agreed that each county office is calculating the prices to be used on the farm plans in a different fashion. There is apparently utter chaos in the field as to which guidelines should be used in determining prices for use on farm plans. In some instances, State FmHA offices have issued price guidelines that are supposed to be used when preparing a 1989 plan as well as in preparing a long-range plan. Unfortunately, even though FmHA has issued these AN's, county offices are not consistently using them. It is also interesting to note that even though the prices that are listed in the AN's are intended to be used as long-range price projections, the projections have been amended significantly over the course of only a few months. Since a few cents per unit (bushel, ton, cwt, etc.) of crop can make a major difference in a farmer's cash-flow, the amendments in the price projections are very significant in the overall debt restructuring application process. However, when FmHA changes its price projections, it does not require that the county offices rerun cash-flow plans for pending debt restructuring applicants.

It is also important to note that one of the application forms that the borrower must have completed in order to have timely applied for the debt restructuring program was the Farm and Home Plan or other cash-flow plan. Even when FmHA implemented the "rule of reasonableness" regarding what constituted sufficient information to be submitted within the 45 days required for a response to this notice package, the borrower was absolutely required to submit the Farm and Home Plan. Some of the farmers whose responses to the FmHA notice were rejected for insufficient information may have been rejected because they did not submit a completed Farm and Home Plan. This seems particularly ironic since we have had reports from many attorneys, farmers, and farm advocates around the country that the first thing FmHA did when considering the farmers' applications for debt restructuring was to redraft the Farm and Home Plan using FmHA's own figures.

A series of Minnesota State FmHA office AN's that list prices to be used in preparing farm plans is a good example of how ridiculous the price guidelines that are going to the FmHA county offices can be. On December 6, 1988, the Minnesota State office issued a farm planning price list, which said for long-range purposes corn was to be figured at $2.35 per bushel at Minneapolis price and to be reduced for transportation and other expenses to determine the local price. In that same AN, No. 2 corn, for purposes of the 1989 farm plan, was to be listed in the first quarter at $2.85, second quarter at $2.95, third quarter at $2.95, and fourth quarter at $2.80. On January 25, 1989, the Minnesota State office issued a new farm planning price list. Again, for long-range planning purposes, corn was to be listed at $2.35 per bushel at Minneapolis price and reduced for a local price. However, for the 1989 farm planning prices, the first quarter price for No. 2 corn was to be $2.47, second quarter $2.62, third quarter $2.63, and fourth quarter $2.24. Then, on February 6, 1989, the Minnesota State office issued a new developmental long-range farm budget price list. On that price list, corn was listed for 1989 at $1.61 per bushel, for 1990 at $1.52, for 1991 at $1.48, for 1992 at $1.52, for 1993 at $1.73, for 1994 at $1.81, and for 1995 at $1.73.

CORN PRICE BUDGET CHANGES

12/06/88 AN	01/25/89 AN	02/06/89 AN
Long-Range $2.35/bushel (Mpls) (to be reduced to determine local price)	Long-Range $2.35/bushel (Mpls) (to be reduced to determine local price)	Long-Range 1989 - $1.61 1990 - $1.52 1991 - $1.48 1992 - $1.52 1993 - $1.73 1994 - $1.81 1995 - $1.73
No. 2 Corn 1st qtr - $2.85 2nd qtr - $2.95 3rd qtr - $2.95 4th qtr - $2.80	No. 2 Corn 1st qtr - $2.47 2nd qtr - $2.62 3rd qtr - $2.63 4th qtr - $2.24	

FmHA's Administrative Notices, at least in the State of Minnesota, also project increases and decreases in various operating and living expense categories over the course of the next several years for purposes of developing the long-range farm plan. It is important to note that as the living and operating expenses are projected to increase significantly over the next 6 years, FmHA is predicting that crop and livestock prices will increase only slightly in most areas, and in many areas actually decrease. This is going to make it very difficult for any farmers to present a long-range farm plan that demonstrates that they will be able to cash-flow after a deferral period.

In developing current year and long-range farm plans, FmHA is unwilling to consider how changes in crop or livestock operations or adding new enterprises may significantly impact the borrower's cash-flow. Since FmHA's regulations now require that the farm plans be based on the borrower's proven record of production and financial management, taking into account actual production and financial history for the past 5 years, FmHA county office employees are often unwilling to consider the effect that a change in the cropping pattern or a farming operation overhaul may have on the borrower's future farm plans. They often will simply take an average of the past 5 years' income and expenses and expect that future farm plans will be consistent with this average without any regard to changes in the operation that may have a significant impact on both income and expenses.

By way of an example of FmHA's irrational actions in developing farm plans, one attorney reported that a client of his who was switching from planting wheat to planting barley was told by the county FmHA office that he could not put any income from the barley crop in the farm plan because he had no past history which reflected income and expenses for a barley operation.

There are many more individual examples of how irrational FmHA county employees are when developing current year and long-range farm plans. The key point, however, is that there appears to be no consistency between counties on how these plans will be developed. The price figures that FmHA provides as guidelines also change regularly, and there is no adjustment or rerunning of farm plans based on revised price figures. Even though FmHA required as part of the original application for debt restructuring that the farmer submit a farm plan, FmHA may actually change virtually all of the figures on that farm plan before determining what will be entered into the DALR$ computer program as the balance available for payment on FmHA debt. All of these problems will have a very significant impact on the determination of whether the borrower is eligible for the debt restructuring.

In addition to the problems of inconsistency in farm planning procedures, many county FmHA offices refuse to negotiate with farmers on their farm plans. FmHA employees often act as though farming operations are static and that only one set of figures, usually FmHA's set of figures, accurately reflects what the farmer can do with his/her farming operation. This is an unrealistic approach to farm planning and fails to give farmers a chance to make adjustments as needed in their plans and, at the same time, adequately challenge figures FmHA uses. Only a few dollars in a farm plan may make or break the farmer in getting debt restructuring. (Actually, only $1 difference in the farm plan can make the difference on the DALR$ program. We have seen debt restructuring offers where the farmer has only $7 left over in his/her cash-flow plan. If he had had $7 less available on the farm plan, he would have been denied restructuring!)

LEGAL ANALYSIS

The only reference to farm planning contained in the Credit Act is in § 615, which deals with debt restructuring and loan servicing. In that section it states that to be eligible to obtain assistance under this section, the borrower must meet three eligibility criteria. The third eligibility criteria is that "[t]he borrower must present a *preliminary plan* to the Secretary that contains reasonable assumptions that demonstrate that the borrower will be able to—(A) meet the necessary family living and farm operating expenses; and (B) service all debts, including those of the loan's restructuring." (Italics added.)

This statutory language clearly indicates that the plan submitted by the borrower was intended to be a "preliminary plan" on which changes may be negotiated throughout the FmHA debt restructuring and loan servicing consideration process. Clearly, by using the phrase "preliminary plan" Congress intended to acknowledge that farm planning was a dynamic process which must include discussion of amendments to original plans, as long as such amendments are based on reasoned assumptions.

RECOMMENDATION

In order to resolve some of these farm planning problems, FmHA should be required to ensure that the borrower is aware of exactly which figures are used when the DALR$ computer program is run. Therefore, FmHA should be required to provide the borrower with a copy of the farm plan that was actually used in the DALR$ run to calculate the balance available for payment of debts and debt restructuring feasibility. If the actual farm plan used contains any figures that are different from those contained on the farm plan submitted by the borrower with his/her application for primary loan servicing, these specific figures must be pointed out and discussed with the borrower. The County Supervisor should identify and explain the reasons for any figures that FmHA changed on the farmer's farm plan. The County Supervisor should also be willing to discuss any changes in the farm plan that are proposed by the borrower, as long as those changes are based on reasonable and verifiable assumptions and comply with existing FmHA regulations. When discussing proposed changes in the farm plan, it should be kept in mind that farming operations are not static but rather that farm planning is a dynamic process requiring a flexible approach that would allow changes to be made, as long as the changes are based on reasonable and verifiable assumptions.

FmHA should allow farm plans to reflect a change in cropping patterns and should allow farmers to hold back young stock to bring their breeding stock levels back up, as long as such plans are based on reasonable assumptions and prudent operating practices. Once all proposed changes in the farm plan have been discussed, all such changes agreed to must be included in a revised farm plan that will be used to rerun the DALR$ computer program.

There should also be a study to determine how price projections were developed. The study should determine whether these price projections were based on accurate data and also discuss why changes in price projections occurred so frequently.

E. DALR$ Computer Program as Bottom Line Determiner of Eligibility

ISSUE

From the previous discussion, it becomes very clear that there are many variables in whether a borrower will be found eligible for debt restructuring.

Since the DALR$ computer program will ultimately decide whether the borrower can cash-flow a restructured loan with a net present value at least equal to the net recovery value of the collateral, it is important that FmHA be willing to run the individual farmer's application through the DALR$ program more than once. This is especially important when one recognizes that as little as a $1 difference on the cash-flow plan may make the difference between being found eligible for debt restructuring and being denied restructuring.

We have received reports that some FmHA county offices refuse to run the borrower's application through the DALR$ program more than once. Since minor changes on a cash-flow plan may have a very significant impact on whether the borrower will be found eligible, the county offices must be willing to be flexible in running the DALR$ program. We have also received reports that even when the farmer points out that FmHA incorrectly changed numbers on a cash-flow plan, or incorrectly input figures into the DALR$ program, the offices sometimes still refuse to rerun the DALR$ program.

Since the September 14, 1988 regulations provide that deferrals can now be made for any period of time up to 5 years, it is also important that the County Supervisors recognize that in order to determine whether a borrower could cash-flow with a deferral, in some instances they must run the program using a 1-, 2-, 3-, 4-, and 5-year deferral to see if there is a significant difference in repayment ability as a result of the different deferral periods. Many county offices are not willing to run the DALR$ program with these different deferral periods.

LEGAL ANALYSIS

In order to comply with the Credit Act, FmHA must make an attempt to use all combinations of the primary loan servicing programs to determine whether a restructured loan can be developed that the borrower can cash-flow. The Credit Act specifically provides in § 615 that, "The value of the restructured loan shall be based on the present value of payments that the borrower would make to the Federal Government if the terms of such loan were modified under *any combination of primary loan service programs* to ensure that the borrower is able to meet such obligations and continue farming operations." (Italics added.)

RECOMMENDATIONS

FmHA should be required to be flexible in doing the DALR$ computer runs. When the borrower points out that FmHA has made errors on the cash-flow plan or in any of the inputs on the DALR$ program, FmHA should be required to rerun the DALR$ computer program making the necessary adjustments.

FmHA should also be required to consider the effect of deferrals on loans for less than the 5-year period if such a reduction in deferral period would result in a better cash-flow for the borrower.

FmHA should be required to do additional DALR$ runs whenever it is appropriate to reflect modifications in the farmer's cash-flow plan or other figures that affect the input on the DALR$ program. FmHA should make these new runs whenever appropriate in the negotiation process with the borrower, in the mediation process, or in the informal meeting prior to an appeal hearing on a denial.

F. FmHA's Rule of Reasonableness

ISSUE

When FmHA issued the notices implementing the Credit Act to 70–80,000 farmers in November 1988, the notices required the farmer to respond by completing nine different forms and signing an attachment which indicated that the borrower wished to be considered for primary and preservation loan servicing within the 45-day period for response. As FmHA received pressure from farm organizations and congressional offices to be more lenient in the time it gave farmers to complete all of the necessary application forms, FmHA issued a policy statement in which it implemented the "rule of reasonableness" that was to be used to determine whether there was adequate information submitted within the 45 days. After three different policy statements were issued, FmHA finally determined that the farmer would have adequately responded within the 45-day period if he/she submitted a completed Form FmHA 410-1, "Application for FmHA Services"; Form FmHA 431-2, "Farm and Home Plan"; and attachment 2, "Acknowledgement of Notice of Program Availability," or attachment 4, "Response to Notice Informing Me of FmHA's Intent to Accelerate My Loan."

FmHA took the position that in order to comply with the Credit Act, all of these forms must be submitted within the 45-day period. Apparently 3,200 farmers who requested debt restructuring were denied for failing to meet these minimal requirements of FmHA's "rule of reasonableness."

LEGAL ANALYSIS

It should be noted that in order to comply with the statutory requirement of a response within 45 days, it would have been sufficient for the borrower to have returned only attachment 2 or attachment 4. The only statutory reference to the requirement response is contained in § 605 of the Credit Act, which is codified at 7 U.S.C. § 1981d. The Credit Act specifically states, "The Secretary shall consider a farmer program borrower for all loan service programs if, within 45 days after receipt of the notice in this section, the borrower requests such consideration in writing." It is clear that by signing attachment 2 or attachment 4 and returning it within the 45-day period, the requirement that the borrower request debt restructuring in writing would have been satisfied.

RECOMMENDATIONS

FmHA should be required to consider all borrowers who indicated in writing that they wanted to be considered for the loan service programs within the 45-day period. This would presumably include consideration of the 3,200 borrowers who were denied consideration under FmHA's "rule of reasonableness."

G. FmHA's New Debt Restructuring Procedures Do Not Allow for Partial Liquidation of Property

ISSUE

In many instances farmers may be willing to sell—and, in fact, are interested in selling—their chattel property and applying the proceeds from the sale to their loans that are secured by that chattel. However, at the same time they would like to restructure their farm ownership or other loans that are secured by their farmland. FmHA's procedures currently do not allow for such a partial liquidation. FmHA currently requires that the borrower either restructure all of his/her debt; or, if eligible, that he/she buy out both the chattel property and the real estate property at the net recovery value; or that all of the property be liquidated. FmHA does not allow separate treatment for operating-type loans secured by chattel property and farm ownership-type loans secured by real estate.

LEGAL ANALYSIS

There is nothing in the Credit Act itself that would prohibit FmHA from considering partial liquidations. The congressional intent in passing the Credit Act was that FmHA do everything possible to help farmers to continue their farming operations and/or to maintain their farmland and homes. Congress clearly intended that FmHA use all of its programs to ensure that, as long as FmHA would not be losing more money through the use of those programs than it would by foreclosing and liquidating the loans, the programs be used to keep farmers on the land. Allowing for partial liquidation would clearly be consistent with congressional intent.

RECOMMENDATION

FmHA should be required to amend its procedures to take into account partial liquidations. This could be done by estimating the value of the property to be sold and running the DALR$ computer program with the value of that property being applied to the FmHA debt. FmHA could then give the borrower a certain period of time in which to make the partial sale once it had committed to restructuring based on the borrower receiving and applying a certain amount of money toward the FmHA loans.

H. Appeal of Debt Restructuring Offers

ISSUE

Several farmers have been offered debt restructuring by FmHA. However, they believe that FmHA has made errors in calculating the form of restructuring to which they are entitled. In many instances, the farmers believe that they should be offered a better restructuring plan. The farmers base this determination on the fact that FmHA has used inaccurate appraisal figures, made inaccurate adjustments on the cash-flow plan, and/or input figures into the DALR$ computer program incorrectly.

These farmers wish to appeal or challenge the debt restructuring offer in an attempt to obtain a better restructuring offer. In some instances, borrowers do not believe they could actually cash-flow with the offer presented by FmHA.

FmHA's current regulations do not provide for any procedure by which the borrower who is offering restructuring could challenge that specific offer. The borrower is offered restructuring and given 45 days to accept that restructuring offer. Presumably, if the borrower does not get the corrections made within that 45-day period, he/she will then be denied restructuring for failure to accept the offer within the required time.

LEGAL ANALYSIS

Since FmHA is required by statute—7 U.S.C. § 1983(b)—to provide borrowers with an opportunity to appeal any decision that is adverse to the borrower's interests, FmHA should be allowing people who believe that FmHA has made errors in its calculations of its debt restructuring offer to appeal that restructuring offer.

RECOMMENDATION

FmHA should be required to allow a borrower to appeal a debt restructuring offer if the borrower believes that there is some error in the way FmHA has calculated the debt restructuring. FmHA should ensure that the 45-day period for accepting the offer to restructure is stayed during the appeal process. The borrower should then be allowed to accept the FmHA offer if he/she fails to prove in the appeal process that FmHA made an error in the calculations.

I. Borrowers Discharged in Bankruptcy Are Not Entitled to Debt Restructuring

ISSUE

FmHA's regulations set up a policy of systemically discriminating against borrowers who have filed for relief in bankruptcy. Many of these farmers were forced to file bankruptcy because of FmHA's refusal to restructure their debts prior to the

Credit Act. Nevertheless, now that restructuring consideration is mandated by the Credit Act, FmHA is denying these borrowers even an opportunity to apply. They are not allowed to apply for primary loan servicing or debt restructuring even though they still retain title to property mortgaged to FmHA. *See* 7 CFR § 1951.907(c) and § 1962.47 of the September 14, 1988 regulations. Despite the fact that FmHA can still take foreclosure action against them, these borrowers are only allowed to apply for homestead protection and farmland leaseback/buyback programs at this time.

FmHA apparently bases its decision to deny these borrowers an opportunity to apply for debt restructuring on its determination that these debtors are no longer "borrowers" under the definition contained in the Credit Act. However, the discharged debtors who still retain title to their property do fit the definition of "borrower" for purposes of the debt restructuring provisions of the Credit Act. Section 602 of the Credit Act defines "borrower" in the following fashion:

The term "borrower" means any farm borrower who has outstanding obligations to the Secretary under any farmer program loan, without regard to whether the loan has been accelerated, but does not include any farmer borrower all of whose loans and accounts have been foreclosed on or liquidated, voluntarily or otherwise.

FmHA debtors who had their accounts discharged in bankruptcy still have remaining obligations to the Secretary. They still have title to the property securing the FmHA loans, and the FmHA mortgage remains in place. The discharge of personal liability on those loans does not mean that the borrower is free of any obligation to the Secretary. The debt at that point should be considered a nonrecourse loan, and the fact that the borrower still has title to the property should entitle him/her to be considered for debt restructuring in an attempt to maintain title to the property.

It should be noted that, in most of these instances, FmHA will have to foreclose in order to gain title to this property. By foreclosing, FmHA may lose more money on these loans than if it allowed these borrowers to be considered for debt restructuring. FmHA would grant restructuring to these farmers only if it meant that FmHA could collect more from them through restructuring than if it foreclosed and resold the property. With this in mind, there is no justification for FmHA not to consider these farmers for restructuring.

In addition to violating the provisions of the Credit Act, FmHA's policies regarding farmers who have received a discharge in bankruptcy also violate the Bankruptcy Code. By failing to allow debtors whose accounts have been discharged in bankruptcy to apply for debt restructuring, FmHA is illegally discriminating against borrowers who have filed bankruptcy. The Bankruptcy Code states that it is illegal for the Government to discriminate against borrowers because of their bankruptcy. *See* 11 U.S.C. § 525.

FmHA's September 14, 1988 regulations do imply that if these discharged borrowers reaffirm their debt, they would be able to apply for debt restructuring. For borrowers who have already received a discharge, however, the Bankruptcy Code requires that reaffirmation be accomplished prior to receiving the discharge. *See* 11 U.S.C. § 524. For borrowers in pending bankruptcies, it is also unworkable. Debtors cannot be expected to reaffirm debt first and then apply for restructuring. If they did, they would still run the risk of being denied restructuring, being then saddled with a nondischargeable debt.

RECOMMENDATION

FmHA should be required to consider these borrowers for debt restructuring. If the borrower is found eligible, he/she could then be required to sign a new note that would reflect the restructured portion of the debt.

J. FmHA's Refusal to Release Production Income for Payment of Essential Living and Operating Expenses

Issue No. 1. In some areas, FmHA is refusing to release proceeds from the sale of 1988 crop and livestock production in order for the farmer to pay his/her 1989 essential living and operating expenses. Instead, when it determines whether the borrower is eligible for debt restructuring, FmHA is requiring that the borrower either (1) apply all proceeds or all of the value of the 1988 crop and livestock production to the loans, or (2) include the value of this crop or livestock production when calculating the net recovery value. Since, according to the statute, borrowers are entitled to the release of their normal income security to pay essential expenses, FmHA should be releasing 1988 crop and livestock production proceeds to pay ongoing living and operating expenses in 1989 and should not be requiring the borrower to apply all of those proceeds to the loan or count it in the net recovery value calculations when the DALR$ computer program is run. In some instances, release of that production income may be the only way for the borrower to obtain money for 1989 crops inputs.

Issue No. 2. FmHA has not issued regulations that explain to the county offices how releases are to be made to borrowers whose accounts were accelerated prior to May 7, 1987.

FmHA did comply with the statutory requirements by sending out a notice to these borrowers in February or March of 1987, which gave them the opportunity to apply for reinstatement of releases. However, more than 12 months have now passed, and final decisions on most debt restructuring applications have not yet been made. FmHA should be required to ensure that its county offices are aware that releases of $1,500 per month must continue to be made to accelerated borrowers who applied for reinstatement of releases.

LEGAL ANALYSIS

Pursuant to § 611 of the Credit Act (codified at 7 U.S.C. § 1985(f)), FmHA is required to release its security interest in a farmer's normal production income in order for the farmer to pay for essential living and operating expenses. This section of the Credit Act also requires that borrowers whose accounts were accelerated prior to May 7, 1987, were entitled to apply for reinstatement of releases of their production income. These borrowers, however, were only entitled to a maximum release of $18,000 over the course of a year if it took FmHA that long to make a final determination on their debt restructuring applications. If FmHA's final determination on the debt restructuring application took more than 12 months, these borrowers are entitled to releases of normal production income for essential living and operating expenses in the amount of $1,500 per month until such final decision is made.

RECOMMENDATION

FmHA should be required to comply with the statute by continuing to make releases of 1988 crop and livestock production income for payment of ongoing living and operating expenses. FmHA should also, when the DALR$ program is run, be prohibited from (1) requiring the borrower to apply proceeds from 1988 production to loans, or (2) figuring the value of the crops or livestock production needed to pay living and operating expenses in the net recovery value if the borrower needs it released to pay living and operating expenses.

FmHA should be required to issue a notice to all county offices explaining that they must continue to make releases to accelerated borrowers who requested reinstatement of releases until a final determination is made and all appeals are completed on the borrower's loan servicing applications.

K. Lease and Sale of FmHA Inventory Property

Issue No. 1. FmHA is taking the position that once it has had a farmer's property in its inventory for more than 180 days, it will no longer give any priority or preferential treatment to the previous owner's application for lease or purchase of that property. In its September 14, 1988 regulations, FmHA also states that if the property was in FmHA's inventory prior to January 6, 1988, and the borrower had previously been offered leaseback/buyback rights under the old provisions, the borrower will not again be given leaseback/buyback rights even though the property is still in FmHA's inventory.

LEGAL ANALYSIS (ISSUE NO. 1)

Subsection (b)(1)(A) of § 610 of the Credit Act provides for a 180-day period after FmHA acquires title to real estate during which the previous owner has the exclusive right to lease or purchase that property. This subsection also provides for an additional 10-day period under which the previous owner's spouse or child or, in the case where the previous owner was a family farm corporation, stockholders in that corporation have the exclusive right to lease or purchase the property.

However, subsection (b)(1)(C) also provides that whenever the Secretary attempts to sell or lease inventory land, the Secretary "shall give preference in the sale or lease, with option to purchase . . . to persons in the following order:

"(i) The immediate previous borrower-owner of the acquired property.

"(ii) If actively engaged in farming—

"(I) the spouse or child of the previous borrower-owner; or

"(II) a stockholder in the corporation, if the borrower-owner is a corporation held exclusively by members of the same family.

"(iii) The immediate previous family size farm operator of such acquired property.

"(iv) Operators (as of the time immediately after such sale or lease is entered into) of not larger than family-size farms."

This subsection indicates that whenever FmHA attempts to sell or lease inventory farmland, even though it may be after the 180-day period in which the previous borrower/owner has exclusive right to purchase, a priority or preference must be given to the previous borrower/owner if he/she would otherwise be eligible to purchase or lease the property. In other words, the preference priority list contained in subsection (b)(1)(C) must be followed at any time FmHA sells or leases property without regard to the number of days the property was held in inventory.

FmHA has failed to comply with this provision of the Credit Act by failing to provide guidelines on how these priority preferences will be applied. FmHA's policy appears to be that there is no preferential treatment for the previous borrower/owner after the initial 180-day period that the property was held in inventory. This policy has already generated litigation in two States (Iowa and Oregon).

RECOMMENDATIONS (ISSUE NO. 1)

FmHA should be required to issue regulations that give county FmHA offices guidance on how these priority preferences will be applied when determining to whom to sell or lease inventory farmland. FmHA should be prohibited from selling or leasing the property to anyone bidding on the property unless they are the bidder in the highest priority position until FmHA issues such guidelines. FmHA should also be required to notify the previous borrower/owner that he/she or his/her family members may have priority preferential consideration if they wish to lease or purchase the property, even though it is beyond the 180-day exclusive right period. This notice should be sent prior to the lease or sale of the FmHA inventory property.

Issue No. 2. FmHA's September 14, 1988 regulations indicate that if a borrower is going to convey property to FmHA in exchange for a leaseback/buyback agreement, FmHA must consider whether there are wetlands, flood plains, highly erodible land, etc., on which FmHA must consider granting a conservation easement to Fish and Wildlife or other governmental agencies. Unfortunately, some borrowers are considering conveying property back to FmHA in exchange for the leaseback/buyback program and are waiving their rights to debt restructuring consideration without the knowledge that conservation easements that would be placed on the property if conveyed to FmHA may substantially impact the profitability of the farming operation.

RECOMMENDATIONS (ISSUE NO. 2)

FmHA should advise any borrower who indicates that he/she wants to be considered for leaseback/buyback that FmHA will be required to consider whether there are wetlands, flood plains, or highly erodible lands on which FmHA must grant a conservation easement to Fish and Wildlife or other governmental agencies. FmHA should also be required to immediately have the property surveyed to determine whether such easements will exist and then immediately notify the borrower of any easements requested by a governmental agency. If the borrower has indicated to FmHA that he/she is considering waiving his/her rights under the primary loan servicing or debt restructuring process in order to be considered for leaseback/buyback, all of these actions with regard to conservation easements should be taken before FmHA allows the borrower to waive his/her rights under the preservation loan servicing program.

Issue No. 3. In the State of Minnesota, FmHA has issued an Administrative Notice which states that if the 180-day period in which the previous borrower/owner has exclusive right to repurchase inventory farmland has expired, FmHA can convey title to that inventory property to another governmental agency for conservation reasons without regard to the State of Minnesota's right of first refusal statute. This violates both Minnesota law and the Credit Act.

LEGAL ANALYSIS (ISSUE NO. 3)

Congress made it clear in the Credit Act that it intended that FmHA comply with State laws regarding right of first refusal if there was any conflict between the Credit Act and State law. Section 610(b)(10) of the Credit Act states:

"In the event of any conflict between any provision of this subsection and any provision of the law of any State providing a right of first refusal to the owner of farmland or the operator of a farm before the sale or lease of the land to any other person, such provision of State law shall prevail."

In Minnesota, the State right of first refusal law effectively allows the previous owner to match any bid FmHA would receive on the property before it can be sold to another party. Conveyance to a governmental agency for conservation purposes defeats the intent of the Minnesota statute.

RECOMMENDATION (ISSUE NO. 3)

FmHA should provide borrowers their right of first refusal under State law before transferring title to the property to another Government agency.

L. APPEALS

Issue No. 1. We have received several reports that it appears that administrative appeal hearing officers are still within the control of the State FmHA offices. Some appeal hearing officers have in fact advised farm advocates that the State office has told them how to rule on a hearing.

LEGAL ANALYSIS (ISSUE NO. 1)

Section 608 of the Credit Act revised the FmHA administrative appeals procedure. In passing this section of the Credit Act, Congress intended to help ensure that the administrative appeals process was unbiased. To do this, it established a national appeals division that is separate from the other divisions of FmHA. The Credit Act requires that the only job of the appeal hearing officers be to hear appeal hearings and that they have no other duties within FmHA. The statute specifically states, "All hearing officers within the national appeals division shall report to the principal officers of the division, and shall not be under the direction or control of, or receive administrative support (except on a reimbursable basis) from, offices other than the national appeals division." *See* § 608(f) of the Credit Act.

State office input or control of appeal hearing officers' decisions obviously violates this provision of the statute.

RECOMMENDATION (ISSUE NO. 1)

FmHA should be required to notify all offices that there will be no substantive discussion between FmHA employees and appeal hearing officers outside the context of the appeal hearing. This notice to all of the offices should be contained in an Administrative Notice issued by the national office.

Issue No. 2. Many farmers are reporting lengthy delays in obtaining decisions in their administrative appeals. In one instance, that we are aware of, the review by the director of the national appeals division was sent in December 1988. The farmers still have not received a response to this request for review.

LEGAL ANALYSIS (ISSUE NO. 2)

Section 608(g) states, "The Secretary shall ensure that the national appeals division has resources and personnel adequate to hear and determine all initial appeals in the State of residence of the appellant on a timely basis. . . . The Secretary may expend sums available in the Farmers Home Administration's various revolving insurance funds for the purpose of this subsection in the event that necessary appropriations sufficient to fund the division are not available."

While this section refers specifically to the initial hearings that are to be held in the State of residence, it indicates that Congress intended that FmHA act on appeals in a timely fashion. Acting on an appeal in a timely fashion should also include acting on the later review stages in a timely manner.

RECOMMENDATION (ISSUE NO. 2)

FmHA should be required to issue an Administrative Notice to all offices within the appeals branch to admonish delays in making appeal and review decisions and to remind all employees of timelines contained in the regulations regarding when decisions must be issued.

M. MEDIATION

In the State of Minnesota we have had difficulty in convincing FmHA that it must mediate in good faith under the Minnesota Farmer/Lender Mediation Law. We have had continuing correspondence with the Minnesota State Director of FmHA. On April 3, 1989, we wrote a letter to the State office outlining the problems we had with how FmHA was proceeding in mediation in the State of Minnesota. In response to that letter we had a meeting with Russ Bjorhus, FmHA State Director for Minnesota, and James Moen, Farmer Program Chief for Minnesota. In response to that meeting, we submitted a followup letter dated April 27, 1989, which outlined the areas on which the State FmHA office and we appear to agree and those areas on which we continue to disagree. In an attempt to document for all county offices, as well as farmers, farm advocates, and attorneys, we have asked FmHA to issue an Administrative Notice containing a more thorough description of the actions FmHA is intending to take in mediation.

The April 3, 1989 and April 27, 1989 letters are attached here

EDITOR'S NOTE: The attached letters of April 3, 1989, and April 27, 1989, will not be a part of the printed hearing record.

By way of recommendation, we suggest that FmHA be required to issue an Administrative Notice containing the proposed language attached to the April 27, 1989 letter we sent to Russ Bjorhus, FmHA State Director for Minnesota.

II. GUARANTEED LOAN PROGRAM

In the guaranteed loan program, FmHA guarantees a portion (usually 90 percent) of the loans made by other lenders (private bankers, Farm Credit System lenders, etc.). There are three major problems with the program.

A. THERE WAS A 7-MONTH DELAY IN THE IMPLEMENTATION OF CHANGES MANDATED BY THE CREDIT ACT

ISSUE

The Credit Act mandated many changes in the guaranteed loan program. The most significant change was the introduction of a program that lenders could use to write-down farmers' debts. This provision is very similar to the debt write-down program that the Credit Act mandated for the FmHA direct loan program. This program is very important to farmer borrowers. Before the introduction of this program, guaranteed lenders could not write-down farmers' debts because FmHA refused to pay losses on written down loans. Guaranteed lenders were forced to foreclose to collect their losses, even when a write-down would otherwise have been a more commercially reasonable alternative.

Regulations to implement this guaranteed loan write-down program were supposed to be in effect by June 4, 1988. 7 U.S.C. § 1989, note (West 1988). FmHA did not issue final regulations until January 13, 1989—54 Fed. Reg. 1534-1600 (Jan. 13, 1989)—more than 7 months after the deadline.

In the period between June 4, 1988 and January 13, 1989, FmHA continued to approve liquidations and foreclosures of guaranteed loans. The farmers who lost their property during this period never had an opportunity to be considered for debt write-down. Presumably, in many of those cases the debt write-down program would have enabled the farmer to keep his/her farm.

LEGAL ANALYSIS

FmHA's failure to implement regulations in a timely manner as mandated by Congress is contrary to law. As such, it is a direct violation of the Administrative Procedure Act. 5 U.S.C. § 551, *et seq.*

It should again be noted that late implementation of critical regulations is part of a pattern in practice by FmHA. The regulations for the FmHA operating loan continuation policy were issued more than 8 months after Congress mandated the implementation of the program as part of an appropriations bill,[1] and the regulations to implement the FmHA direct loan debt restructuring provisions of the Credit Act were published more than 3 months late.[2] (For details about the continuation policy problems, see the enclosed article.)

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[1] Amendment No. 222 of the Supplemental Appropriations Act, Pub. L. No. 100-71, 100 Stat. 429 (July 11, 1987). The final regulations were first published on March 16, 1988. 53 Fed. Reg. 8738-40 (Mar. 16, 1988).

[2] Regulations were supposed to be in effect by June 4, 1988. 7 U.S.C. § 1989, note (West 1988). Final regulations were not published until September 14, 1988. 54 Fed. Reg. 35638-798 (Sept. 14, 1988).

EDITOR'S NOTE: The material "the continuation policy, see the enclosed article," will not be a part of the printed hearing record.

RECOMMENDATION

FmHA should immediately identify all farmers whose loans were approved for liquidation during the 7-month delay period and offer the restructuring alternative.

B. NO NOTICE OF THE DEBT RESTRUCTURING PROGRAM IS GIVEN TO LENDERS OR FARMERS

ISSUE

As explained above, the new guaranteed loan debt restructuring program is a very powerful tool. It can enable farmers to save their farms, and it can enable lenders and FmHA to save money by acting in a more commercially reasonable manner. The problem is that very few people know about the program! FmHA is not sending notices to guaranteed farm borrowers, nor to the guaranteed lenders. The program is being drastically underutilized, primarily because of a simple lack of knowledge.

LEGAL ANALYSIS

FmHA's failure to notify farmers and lenders of this program may be susceptible to a challenge based on the due process clause of the fifth amendment to the United States Constitution. Also, according to recent case law, when a statute makes it necessary for a borrower to request consideration for a loan servicing program, a notice requirement is implicit in the statute. *Allison* v. *Block*, 723 F.2d 231 (8th Cir. 1983).

RECOMMENDATIONS

Congress should require FmHA to send timely, readable notices to guaranteed loan borrowers and lenders to notify them of the availability of the debt write-down program.

C. FMHA DOES NOT ALLOW GUARANTEED LOAN FARM BORROWERS TO APPEAL UNLESS THE LENDER JOINS IN THE APPEAL

ISSUE

In the Food Security Act of 1985, Congress mandated that FmHA must provide applicants for and recipients of guaranteed loans with an opportunity to appeal all adverse actions.[3] FmHA illegally interferes with farmers' exercise of their rights under this statute by refusing to allow a farmer to appeal *unless the lender joins in the appeal. See* 53 Fed. Reg. 26413 (July 12, 1988) (to be codified at 7 CFR § 1980.80); *see also* 53 Fed. Reg. 26401 regarding § 1900.52. This restriction makes it impossible for farmers to exercise their appeal rights in many situations. For example, many banks are reluctant to join in an appeal because they fear that FmHA will retaliate against them by challenging their loss claims or otherwise interfering with the profitability of their guaranteed loan portfolios.

LEGAL ANALYSIS

FmHA's regulations are in direct violation of the statute. Therefore, the regulations are susceptible to challenge under the Administrative Procedure Act. 5 U.S.C. § 551, *et seq.* The regulations have been challenged in one case; as of this writing, the case is awaiting decision from the Sixth Circuit Court of appeals.[4] Additionally, the regulations may be open to challenge under the due process clause of the fifth amendment to the United States Constitution.

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[3] The Food Security Act of 1985, Pub. L. No. 99-198, title XIII, § 1313(a) (December 3, 1985), 99 Stat. 1525 (codified at 7 U.S.C.A. § 1983b (West Supp. 1987)). "The Secretary *shall provide* an applicant for or borrower of a loan, or an applicant for or recipient of a *loan guarantee*, under this title who has been directly and adversely affected by a decision of the Secretary made under this title (hereinafter in this section referred to as the 'appellant') with written notice of the decision, an opportunity for an informal meeting, and an *opportunity for a hearing* with respect to such decision, in accordance with regulations used by the Secretary consistent with this section." (Italics added.)

[4] *Parker* v. *Lyng*, No. 4-88-36 (E.D. Tenn. June 10, 1988), appeal filed, No. 88-5694 (6th Cir. June 22, 1988).

RECOMMENDATION

Congress should pass a statute to clarify that FmHA may not condition the farmer borrower's appeal rights upon the lender's participation in the appeal.

CONCLUSION

It is clear that many implementation problems exist under the Agricultural Credit Act of 1987. To a certain extent, such problems are predictable in any new program adopted by an administrative agency, and will take time to resolve. However, because the stakes are so extremely high here for FmHA borrowers, the "working out" of the problems should not be at the expense of farm families. Rather, where problems or mistakes exist, FmHA should acknowledge and address them, *and* it should review every case where the problem may have caused wrongful decisions to be used under the Credit Act.

To date, FmHA has been generally unwilling even to recognize these problems. Now is the time that it must do so, however, if Congress' purposes in enacting the Credit Act are to be realized. The alternative, as we have seen for almost the entire past decade, will be protracted and expensive litigation, as well as a continuing assault on the credibility and viability of FmHA.

We hope the committee will assist our clients, through whatever persuasive means are available to it, in moving FmHA toward full compliance with the Agricultural Credit Act of 1987.

Mr. Massey will be testifying on May 9 at the oversight hearing. This letter will serve as his formal testimony, which we would like to be recorded in the record of the hearing.

Thank you for your continuing interest in our observations, Mr. Chairman, and in proper implementation of the Credit Act.

Sincerely,

FARMERS' LEGAL ACTION GROUP, INC.
LYNN A. HAYES,
Litigation Coordinator.
JAMES T. MASSEY,
Executive Director.

PREPARED STATEMENT OF CHERYL COOK, LEGISLATIVE ASSISTANT, NATIONAL FARMERS UNION, WASHINGTON, DC

Thank you, Mr. Chairman, and good morning. I am Cheryl Cook, with the National Farmers Union legislative staff here in Washington, DC. I appreciate the opportunity to be here today to discuss the sections of the Agricultural Credit Act pertaining to the Farmers Home Administration (FmHA).

When this subcommittee held its oversight hearing in January, we testified that while the statute and regulations were fairly specific, there were questions of interpretation that are still unresolved. And, there have been several new concerns that have arisen since January. In many respects, our greatest concerns with the successful implementation of the Agricultural Credit Act lie beyond the jurisdiction of this subcommittee. I would like to structure my remarks within the context of three general questions.

The first question is what can be done from now on to ensure that borrowers get the debt restructuring opportunity that Congress intended them to have? FmHA's first mailing of notices received considerable attention due to its size, but these notices will continue to be mailed out as borrowers reach 180 days of delinquency. Under FmHA regulations, by the time a borrower reaches 180 days delinquency and is eligible to apply for debt write-down, he should have already been considered for several other servicing options, such as reamortization and deferral. The county office should already have a substantial amount of information available from the borrower. The borrower's written request to be considered for primary loan servicing under the Agricultural Credit Act should not require a morass of forms to be filled out within 45 days, particularly when much of that information will already be available to the County Supervisor. We continue to disagree with FmHA's interpretation of section 605 of the act.

Because of the specificity of the statute and regulations, many of the problems that have arisen have not been systemic, so much as they have been attitudinal problems on the part of particular FmHA employees and sometimes borrowers. We cannot ask you to legislate attitudes. But, where one side or the other has been uncooperative, intercession by a Member's office can be helpful. And, as remaining appointed positions are filled within USDA, Senators can help to ensure that FmHA's leadership is provided by individuals who understand how the act is to be implemented and are committed to its goals. Consistent interpretation, particularly among State Directors, is critical for long-term success. This subcommittee's oversight ability can help to ensure a maximum degree of uniformity.

Many of the calls to our office have come from rural attorneys who are unfamiliar with the Agricultural Credit Act. Some have been bankruptcy specialists, while others have specialized in some unrelated field and are representing the farmer borrower only because all of the local debtor/creditor relations specialists are on retainer with the creditors. Excellent training materials have been developed by the Farmers' Legal Action Group, but distribution has been limited for financial reasons. Perhaps if those materials could be reviewed by this subcommittee and given a more "official" status, farm groups could more easily convince State bar associations to provide copies for their membership, or even to offer continuing legal education programs on the act.

One of the goals of the act was to provide a less formal dispute resolution system, in which both sides could avoid the time and expense of a formal legal proceeding. One way to accomplish this is to continue providing matching funds to qualified State mediation programs. We recognize that the appropriations process is beyond the jurisdiction of this subcommittee, but we welcome all the help you can give in persuading those in whose jurisdiction the question lies to provide funding.

A second general question is what should be done for borrowers whose primary loan servicing applications have been denied or who applied at the outset for preservation loan servicing?

For preservation loan servicing to work, a former FmHA borrower must convince someone to provide him with financing to repurchase some or all of his former property. We are not going to suggest that this subcommittee should require FmHA to finance everyone who wants to exercise the right of first refusal or reclaim a homestead. However, this subcommittee can help reduce risks by quickly passing a comprehensive rural development package. A former borrower becomes a much better financing prospect if the property is near a vibrant community with realistic marketing potential or off-farm job opportunities.

Rural development should include job training. Farmers could be retrained to operate a different type of farm with greater market potential, or could learn nonfarm skills that will qualify them for jobs in town.

Finally, we believe that secondary loan servicing will work better in the future if there can be resolution of the question of conservation easements on FmHA's inventory property. The act provides for the use of conservation easements as one possible tool in primary loan servicing, but it is silent as to property in inventory. During his confirmation hearing, Secretary Yeutter stated his belief that the Fish and Wildlife Service would no longer take easements on inventory property, but reports from our State offices indicate that the practice is continuing. It would appear that the Fish and Wildlife Service is getting first refusal on the property, rather than the former borrower.

The third general question is what should be done for borrowers whose primarily loan servicing applications have been accepted? As has been pointed out repeatedly, there are substantial capital gains questions surrounding debt restructuring, particularly the use of shared appreciation mortgages. We have had several calls in recent weeks from borrowers whose loan servicing applications have been accepted, but who still elected to go into bankruptcy. They saw little sense in getting their FmHA problems resolved only to get into trouble with the Internal Revenue Service. Mr. Chairman, we recognize that this issue is beyond this subcommittee's jurisdiction, and that you and many others are aware of the problem. We promise you our full support in working with the Finance Committee to get prompt action on your proposal.

Borrowers whose debts can be restructured successfully will continue to need operating capital. We still have serious doubts about whether the FmHA guaranteed loan program is reaching its intended beneficiaries, and whether the agency should be allowed to pursue its apparent goal of phasing out direct lending. Direct lending seems particularly appropriate for borrowers who are working through a restructuring plan. We doubt that the current guarantee levels would convince commercial lenders to lend to borrowers in the midst of a debt restructuring plan. It appears to us that commercial lenders have been using guarantees to reduce risk on their existing loan portfolios, rather than using guarantees to make new loans to FmHA eligible borrowers. According to the latest FmHA Farm and Housing Activity Report, this fiscal year has seen 22,425 applications for direct operating loans, with 31 percent of those that have been processed being rejected, withdrawn, or expired.

There have been 4,013 applications for guaranteed operating loans through approved lenders, and of those that have been processed, 25 percent have been rejected, withdrawn or expired. The guaranteed program is not meeting the demand for operating capital.

For restructuring plans to work properly, we must turn our attention to the prices of agricultural commodities. In crafting the next farm bill, we urge the Senators on this subcommittee to remind your colleagues that the only way to pay off debt is with income. The farm bill must allow a farmer to recover his costs of production from the marketplace, or restructuring his debt will surely end up as an exercise in futility.

As a final thought, we would urge you to recall the statement of Secretary Yeutter before the full committee on April 19. The Secretary stated that Congress was free to write a 1990 farm bill, but that another farm bill might be necessary to resolve inconsistencies with the General Agreement on Tariffs and Trade (GATT). We realize that many of the specifics in the GATT agreement have yet to be negotiated, but this subcommittee needs to know if all FmHA activities, which basically involve subsidizing credit to borrowers who could not otherwise be in production, will be considered "trade-distorting subsidies" under GATT. If so, we must deal with that before we can address long-term loan servicing problems. We must also know if the target prices and deficiency payments relied on by borrowers in their debt restructuring plans will be eliminated by some form of "global decoupling" under GATT. The Agricultural Credit Act does not exist in a vacuum, and its oversight cannot happen oblivious to other developments. Every issue this subcommittee considers for the next 2 years must be viewed in the context of the potential consequences of GATT.

Thank you again for this opportunity to express our concerns. I would be happy to address any questions you might have.

PREPARED STATEMENT OF BENNY BUNTING, CREDIT COMMITTEE CHAIR, NATIONAL SAVE THE FAMILY FARM COALITION, OAK CITY, NC

We attend this oversight hearing with purpose and determination because back home fellow farmers and ranchers across your land are fighting for personal and community survival. The charge I have been given by FmHA borrowers is to impress upon you the imperfections, misinterpretations, and misapplication of the 1987 Credit Act.

I testify here today as the Chair of the Credit Committee of the National Family Farm Coalition, an organization representing over 40 organizations in 32 States working to strengthen the family farm system of agriculture. We worked with Members of Congress to pass this legislation, commented on the regulations, worked with farmers to complete their packets, and now are working through the appeals process. We want to work with you to see that the legislation does work and helps farmers stay on their land when it is the least cost alternative.

I would also like to submit some statements from member organizations on their concerns for the record of this hearing.

DEBT RESTRUCTURING

Of primary concern is the outcome of the first wave of debt restructuring notices sent farmers in November 1988. These concerns will also apply to farmers who wall be eligible for the new borrowers' rights provisions later this spring as their loans become delinquent.

All farmers who met the 45 day deadline for submission of their packets were required to complete a Farm and Home Plan. It is this information that we assumed would be put into the computerized DALR$ program to determine the outcome for the debt restructuring options under the new Ag Credit Act. What we have discovered during the past few months from farmers around the country is that there are problems with the entire process—from the input figures being changed by FmHA employees without notification of the farmer, no access to the computer program, to the assumptions by FmHA of the commodity prices and costs of production over the next 5 years.

The commodity prices were issued in an early December Administrative Notice and have since been revised but still predict 5 year reductions in commodity prices. The source of our figures come from FmHA AN-1857 (1924) exhibits A and B. I will use four commodities—corn, soybeans, broilers and turkeys for today's example based on the December 6, 1988 Administrative Notice. A DALR$ program computer run figures many service options including deferrals for 5 years. The following calculations are to be used in a row crop farming operation—corn prices will drop 24.6 percent of 1988 average prices for 1990-1994. Soybeans prices will drop 27.5 percent of 1988 for years 1990-1994.

Let's do a working example of Farmer *x* with a restructuring request to FmHA. The 1988 gross income from corn was $80,000; from beans was $80,000; for a total of $160,000. Estimating expenses to be 75 percent of gross income, operating expenses were $120,000. Farmer *x* has a viable, feasible operation with $40,000 to pay family living and service their debt obligation—or do they? Let's feed this information into the DALR$ program and the projection will be: income from corn—$60,320 and for beans $58,000. According to the FmHA AN, expenses have climbed by 20.1 percent of 1988 figures resulting in expenses of $144,120. Consequently, post-1988 gross income is $118,320 and expenses are $144,120. The question asked Farmer *x* is, "What kind of farmer are you? You have squandered and mismanaged a farming enterprise with a gross profit of $40,000 into one that has losses of $25,800 per year (a net change of $65,800)?" Now Farmer *x* is only eligible for a net recovery buyout—an option without any FmHA financing and possibly very devastating effects if the 2 year recapture agreement is triggered.

Farmer *y* owns a poultry farm. According to FmHA projections, broiler income will increase by 12.6 percent of 1988 prices for production years 1990-1994. Turkeys will increase by 43.8 percent of 1988 prices for production years 1990-1994. The farm 1988 gross income was $40,000 for broilers and $46,000 for turkeys. Enter this information into the DALR$ program and the projection will be broiler income $45,040 and turkey income at $66,148. The computer printout now shows that you have $25,188 additional income for debt servicing. How did Farmer *y* manage this? The poultry farmers I know have not even had a minimal contract increase in over 3 years. Nonetheless, their repayment schedule will increase to reflect this fictitious income (or rather corporate income).

The high number of net recovery buyout options being offered is no surprise when you look at these calculations. The use of these figures, which assumes reductions in farm program prices beyond the expiration of the current farm bill and ignores current market prices, is spelling disaster for every farmer having to run their future through the DALR$ program assumptions. The reluctance of FmHA office personnel to consider different options and their adherence to the formulas/prices listed in the AN's despite a farmer's Farm and Home Plan raises very serious questions about this entire process.

OTHER DEBT RESTRUCTURING CONCERNS

(1) The treatment of outstanding and delinquent unsecured debt must be addressed when working out a debt restructuring plan. Only secured debt should be figured in the workout as the unsecured debt is not collectible. Treating uncollectible debt as due and payable the first year is unrealistic and discriminatory as it is treated differently under debt restructuring than under bankruptcy. The intention of the Agricultural Credit Act of 1987 was to keep farmers from having to go through bankruptcy. By altering the treatment of unsecured debt, farmers will be forced into choosing bankruptcy.

(2) FmHA Supervisors have been guilty of changing the input data on the Farm and Home Plan without the knowledge or consent of farmers. Farm and Home Plans should accurately reflect a farmers' production capability. Supportable farm figures should not be changed. In cases where changes are necessary, both the FmHA Supervisor and farmer should negotiate the revised figures. These often minor changes should not be delayed by having to go through the appeals process, costing both the farmer and the taxpayer scarce resources.

RECOMMENDED ACTION

(1) The DALR$ program must be rewritten and made available to farmers on a DOS compatible system. In addition a workbook should be developed for use by both farmers and FmHA supervisors who are preparing information for FmHA review and analysis. This is necessary to ensure that both a farmer and FmHA Supervisor are working in tandem on a feasible plan which will allow profitable continuation of the farm operation.

(2) All calculations should be rerun to ensure that farmers receive their fair options under the law.

FmHA County Committees

There is a general problem with the training for committee members. The Agricultural Credit Act of 1987 outlines new responsibilities and duties of County Committee members. These have not been adequately explained, and consequently, committee members have made judgments which have severely impaired the ability of farmers to implement necessary management decisions which will make and keep their farm businesses viable.

County Committee members in many cases are unfamiliar with the regulations of the 1987 Credit Act. Specifically, they have the job of determining a farmers' eligibility for receiving operating loans. Because a farmer is delinquent, County Committee members are denying eligibility. This is counter to the least cost alternative intention of the law. County Committees need to understand that they are to look at the operation and when possible and cheaper for the Government to keep working with that farmer.

The FmHA continuation loan policy in effect strengthened by the new regulations is a tool which County Committee members should use with farmers in order to meet production credit needs for crop and livestock. Many of them are totally unaware that these loan funds are available to a borrower during debt restructuring.

(3) County Committee members must also deal with the problems facing those who left farming during the past 10 years on the advice of FmHA County Supervisors. These people were told to liquidate their farms and turn over the proceeds to FmHA in satisfaction of debt. They did so in good faith and have gone on with other endeavors believing that FmHA would finish the debt settlement procedure and forgive deficiencies as FmHA promised. This was not done for various reasons and now these people are facing a financial consequence which they should not have. County Committees should see that such debt settlement is accomplished and that deficiencies are erased as FmHA implied that they would be when these former operators complied voluntarily with FmHA's request.

(4) There continue to be problems with County Committee election irregularities. The nomination and voting procedures must be clearly defined and conducted in a fair and equitable manner.

RECOMMENDED ACTION

Training of County Committee members must be a priority to ensure that farmers are not being misinformed about their rights under the new law. Continued monitoring of the election process must be ongoing.

LAND IN INVENTORY

We have major concerns as to whether farmers whose land was in inventory on the effective date of this legislation are receiving their rights under the legislation. As I raised at the last oversight hearing, a particular concern relates to the notice of new priority considerations for repurchase of the land as included in the Agricultural Credit Act. In Illinois, it took the involvement of Senators to ensure that a blueberry grower received a lease with an option to buy. In North Carolina, after months of appeals and discussions, a farmer in my area finally received opportunities under the law. In Oregon, there is a lawsuit pending on this same issue.

There is an additional concern about the large number of conservation easements that have been placed on land in FmHA inventory. We question whether there are reappraisals of the land after the easement has been granted and prior to the reoffer of the land to the previous owner.

RECOMMENDED ACTION

(1) Renotice to all previous owners and others who are eligible for repurchase of the land currently held in inventory. If the land has already been sold out of inventory or leased, the previous owner should also receive notice with the option to enter into a lease/option for their property.

APPRAISALS

The appraisal figure is critical to debt restructuring. Reports from around the country indicate that appraisal values are higher than recent sales in the area and the cost of the appraisals to the farmer are also very high. There have been reports of appraisers on contract to FmHA doing armchair or windshield appraisals without really examining the assets of a farmer. These type of contracts are denying farmers options under the law and FmHA is paying contracted appraisers for a sloppy job.

RECOMMENDED ACTION

(1) Appraisals must be fair and in line with land values comparable to the area. They should be done using independent appraisers who do not work for FmHA.

(2) Another problem arising from the appraisal procedure is the cost of the independent appraisal. They are often prohibitive. What used to be an $800–$1,000 appraisal is now being charged at close to $3,000. FmHA should be required to use the appraisals that are conducted.

(3) Land must be reappraised to reflect any easements that may have been placed on the land while in FmHA inventory. Unless reappraised at FmHA expense, the farmer is paying for land whose value has been significantly altered.

MEDIATION

The key to making the restructuring process work is mediation. There is a growing need for consistent treatment with regard to mediation in all States. This past year 14 States received Federal matching funds for State mediation programs. The deluge of FmHA notices in late 1988 and upcoming 180-day delinquency notices for 1989 demand new and expanded mediation programs. We have urged the House and Senate Appropriations Subcommittee to fund mediation at the full authorized level of $7.5 million to meet this increasing need. There are currently five new programs pending in State legislatures that will require new matching funds.

A major flaw in the present process is the practice of FmHA only wanting to mediate the debt of other creditors without working to restructure FmHA obligations at the same time. The restructuring process works only when all debt is restructured and the farmer can return to profitable level of production and pay off debt over the long term.

RECOMMENDED ACTION

(1) Mediation should be required and should be conducted by independent and well-trained mediators. In those States without formal programs, FmHA should not be controlling a token mediation session.

(2) Mediation must be conducted in good faith with both parties having the goal of finding an equitable solution to the debt problem. FmHA should not require mandatory creditors meeting directly following an adverse decision by FmHA as is presently being done.

FMHA APPEALS

There is a problem with defining what is an appealable decision. For example, 1951–S—exhibit F is the offer to farmers of their restructured debt. It is not clear to farmers when they apply for this program and are denied, that they have no appeal rights. Farmers should be informed of this prior to filing the application. A better solution, however, is that adverse decisions on 1951–S—exhibit F be appealable.

There is a question of what will happen to the farmer who does not accept the FmHA offer for restructuring or debt settlement. Often farmers find that they cannot meet the terms FmHA requires. In good faith they have to turn down such offers. There is no uniform policy developed which addresses how FmHA handles farmer refusal. Some FmHA decisions are appealable and in other cases they are not. This inequitable treatment must be corrected.

RECOMMENDED ACTION

FmHA must be instructed to be as timely as possible in the appeals so as not to starve farmers out by their delays. Appeals should not be used when a meeting could have achieved necessary modifications to make the plan work.

There should be a rehearing of the appeals case if a farmers' appeal is being denied by someone other than the appeals officer who heard the case.

Appeals officers should be independent of FmHA and their decisions should not be impacted by the running record held by FmHA of the borrowers' account.

NET RECOVERY BUYOUTS

The implications for farmers of net recovery buyouts is of great concern as they constitute the majority of debt restructuring options being offered. Concerns have been raised over the availability of financing as well as the consequences of a farmer triggering the 2 year recapture agreement.

(1) When a farmer is offered the net recovery buyout option and can get the necessary financing, he should have his lien released immediately. The present proce-

dure of holding release of liens from 6 weeks to 6 months based on the holding period outlined in the DALR$ program effectively kills refinancing deals of other creditors who want security before completing negotiations. Failure to comply with lien release instructions in the law is illegal.

(2) At the beginning of the debt restructuring process, farmers were led to believe that net recovery buyouts could be financed with other lenders through FmHA guaranteed loans. In March 1989, the County Supervisors were told that this could not be done. Who made this change? This must be reviewed. It makes no sense for farmers to be denied the use of the FmHA Guaranteed Loan Program if it is the least cost alternative. Denial of their access to these loan funds is not only discriminatory but is counterproductive and costly to the taxpayer.

(3) There is concern over the timing of the creditors meeting and the release of FmHA documents to other creditors based on the first unsigned DALR$ workout of a net recovery buyout. These communications should occur after a signed DALR$ workout has been negotiated; not until then is it a binding document.

SHARED APPRECIATION AGREEMENTS

The implications and financial obligations of farmers signing Shared Appreciation Agreements must be clarified before a farmer can adequately assess the feasibility of an FmHA debt restructuring plan. There needs to be a clear ruling from the Internal Revenue Service on the timing of tax obligations under a Shared Appreciation Agreement.

RECOMMENDED ACTION

Congress should continue to put pressure on the Internal Revenue Service to issue a ruling on this issue. Based on the ruling, there will need to be modifications to the legislation currently being introduced in the Senate by Senator Conrad, among others, to ensure that it protects farmers going through debt restructuring.

CONSERVATION EASEMENTS

The present policy of allowing the Fish and Wildlife Service to determine easements to be attached to the deed for land in inventory raises major concerns. This process of dividing up the farm has been delaying farmers' planting and program enrollment decisions.

We question why Fish and Wildlife is imposing these restrictions when the land in inventory is being leased back or bought back by the previous owner. It seems to make more sense for these decisions to be made by SCS and ASCS as part of the farmers' overall conservation plans.

These deed restrictions are of even greater concern given the large number of Net Recovery Buyouts that FmHA will process. Such land conveyance will put more land into inventory classification with deed restrictions. The result will be the dismembering of farms from one profitable productive unit into difficult-to-manage fragmented pieces of ground. This is not a least-cost solution. Land classification and management need to remain in the province of farmers and farmer related agencies such as ASCS and SCS.

CONCLUSION

On behalf of the Coalition, I thank the subcommittee for hearing our concerns. For nearly a decade, many of our farmers have been working to keep the family farm system a viable segment of the agriculture industry during this current crisis. As family farmers, we have provided the food and fiber which not only builds this Nation but which has ensured food security as well. We have survived the ravages of storms, droughts, wars, and economic upheaval. We are dedicated to surviving for generations to come.

Today, we are asking for your help in holding FmHA accountable to their responsibility to family farmers as in their original mission and as specifically authorized in the Agricultural Credit Act of 1987. We are also asking that you join us in demanding that FmHA answer for their actions under the law. We look forward to a working partnership with this subcommittee with the primary goal of ensuring the survival of our family farm system. We thank you for considering our concerns today and your continued willingness to work with farmers around the country.

Prepared Statement of Johnny Porch, National Vice-President, American Agriculture Movement, Inc., Brownsville, TN

I thank the chairman and members of this subcommittee for the opportunity to appear here today to share with you views concerning the implementation of the Agricultural Credit Act of 1987 by the Farmers Home Administration.

I currently serve as the national vice-president of the American Agriculture Movement, Inc.; I am a cotton, soybean, and vegetable farmer from Brownsville, Tennessee; and I also work as a farm credit counselor, working with farmers who are in a financial crisis and who are attempting to restructure their FmHA loans under the Agricultural Credit Act of 1987. It is primarily in this last capacity that I appear here today.

Perhaps I should say at the outset that my experience working with farmers in distress and with the FmHA to implement the terms of the farm credit act is somewhat at odds with that of some of my colleagues from other parts of the country. As you will be hearing from other witnesses today, farmers in many States have generally not been successful in working out restructuring plans with the FmHA. The testimony from these witnesses should be instructive in determining where and how the system is failing to achieve the results intended by Congress.

These reports from farmers and farm credit counselors in many other States, and my own experience working on a case in Texas, reinforce the impression that something is wrong in the way the farm credit act is being implemented in many areas. While I am not personally familiar enough with these other situations to analyze why they are not working well, perhaps I can help by talking briefly about the situation in Tennessee, where most of my counseling has occurred, and where the results have been good.

The first point I would like to make, and perhaps the most important ingredient in assuring that the farm credit act achieves the results intended by Congress, is that the State and local FmHA officials in Tennessee appear committed to helping farmers stay on their farms wherever possible under the terms of the law. When a problem arises in the process of considering a farmer for restructuring or other relief under the act, and some problems invariably arise in each case, the FmHA officials are available to meet to discuss the problem and are forthcoming in helping work out a creative solution.

In most cases where an initial problem has arisen, I have sat down with the appropriate FmHA official at the county or State level and we have discussed the problem and come up with a solution that works for the farmer and for FmHA. In those rare instances when that initial meeting left us without a workable solution, I have found the FmHA officials in Washington, DC to be available and helpful in discussing the problem and suggesting alternative solutions.

I have consciously tried to avoid looking to Washington for help except in those situations where I had exhausted the local avenues of appeal. State and county FmHA officials were generally working in good faith to carry out the intentions of Congress, and solutions were found at that level. But when necessary, the folks in the Washington office have also been helpful in explaining regulations and discussing options to assure that the farmer-borrower I represented was aware of and had the opportunity to qualify under all options included under the farm credit act.

In summary, I am pleased to report that every farmer-borrower that I have represented under the farm credit act has been qualified for some assistance sufficient to keep him on the farm. Sometimes it was restructuring; sometimes debt write-down; sometimes voluntary conveyance with a buyback and sometimes it was merely to exercise the leaseback provisions. But in each case the farmer was eventually given a fair opportunity to qualify for the relief intended by Congress.

Again, I want to stress that this does not mean that each farmer was successful in achieving the particular goals they sought. Some farmers approach the restructuring provisions of the farm credit act with unrealistic expectations; they may hope to writeoff more debt than the law provides, or to benefit from some other provision for which they do not qualify. Part of the job of any farm credit counselor is to discuss with the farmer-borrower their expectations and to help them analyze their financial situation realistically. While many of those farmers with which I worked did not receive all of the relief they wanted, after preparing their Farm and Home Plan, and discussing their plan with the FmHA officials, it was possible to determine what relief they were entitled to and to obtain that relief.

I should note here that one element of this whole equation which is important is the attitude of the farmer-borrower. Because of the stress of being in a financial crisis, with the fear of losing the farm, it is not uncommon that the farmers are scared, hurt, and resentful toward the FmHA. They often feel that the FmHA has been insensitive to their situation and difficult to work with. Almost all of the farmers have some story to tell concerning their dealings with the FmHA which have left them angry and fearful and distrusting of the agency. There is an enormous reservoir of ill will toward FmHA.

So it is not unexpected that some farmers approach this restructuring opportunity with an attitude of considerable hostility and distrust. This same unhelpful attitude may be present on the part of the FmHA official whose responsibility it is to advise and assist this farmer and to objectively evaluate his application. It is obviously helpful when a farm credit counselor, with less emotional involvement, can represent those farmers. Whenever the initial analysis of the Farm and Home Plan can be made without residual hostility laying a role in the process, from either side, the chance of working out an acceptable plan is enhanced greatly.

It is clear that a county FmHA official who has grown weary of dealing with the large numbers of delinquent farmer-borrowers, and who may have developed a grudge again some of those clients, can often find a reason not to approve almost any plan submitted by the farmer. From my discussions with farmers around the country, and with other farm credit counselors, I am certain that this does occur. And from what I hear from some States, it appears the FmHA State Directors may sometimes share this unhelpful attitude, further complicating the ability of anyone to receive a fair and objective consideration in that area.

I am pleased to say that I have generally not had to deal with those attitudes on the part of the FmHA officials in Tennessee. Rather they have generally been helpful and hardworking, and have seen their jobs as trying to assist the farmers under the law, rather than trying to force delinquent farmers off their land. Because of this helpful attitude by FmHA officials, the farmers I have worked with have generally been treated fairly, and have qualified for relief necessary to keep them on the farm.

I would be remiss not to note for the record the problems which were caused for nearly everyone involved in this process—the farmers and the FmHA officials—by the timing of the original 45-day notification mailing to delinquent farmer-borrowers.

There has been considerable speculation by many people that these notices could and should have been mailed earlier in the year, if it had not been an election year. The general feeling among the farmers is that the administration did not want to deal with the negative political fallout of mailing these notices to tens of thousands of voters until after the election.

Regardless of whether politics played a role in the timing of the mailing, most farmers received their notices in mid-November. Because of the intervening holidays. many farmers were away during part of the 45-day period allowed to respond to the notices, and many of the attorneys and accountants needed to fully prepare a response to the notices were unavailable. The result for many farmers was that they had far less than 45 days available to them to actually work on a rather complicated set of documents required to request restructuring and other relief under the new credit act. This resulted in some farmers who failed to meet the deadline, and many others who prepared their applications in a hasty and incomplete manner.

The other problem which flowed from the timing of these notices affected the FmHA borrowers who were not delinquent. In our area, farmers always file their applications for operating loans right after the first of the year, and usually have them approved by mid-March. This year the FmHA offices were so swamped by the flood of restructuring applications due just after the first of the year, all requiring an evaluation and determination within 60 days, that consideration of the applications for operating loans was substantially delayed. This caused serious problems for many of FmHA's nondelinquent borrowers in our area who had to delay their planting decisions and preparations while FmHA handled loan restructuring applications.

In discussions with FmHA officials in my home State, there seems to be a consensus that some of these problems could have been alleviated if the agency would have taken the time to better train their field personnel in advance of mailing out the notices to farmers. FmHA needed better training to run the DALR$ computer program and better training to more thoroughly understand regulations dealing with the various options available to a farmer-borrower under the new law. With better training of the FmHA field personnel in advance of the mailing, the process of advising farmers and, subsequently evaluating their applications, could have gone more smoothly and more quickly.

CONCLUSION

Because the farm credit act has worked reasonably well in my State, I know that it could better serve the needs of delinquent farmers in other areas. The problems lie less with the law and more with the personalities and attitudes of those responsible for implementing the law.

Farmers and farm credit counselors need to be sure that they are approaching the agency in a realistic manner, seeking relief to which the farmer should be entitled under the act. This process need not be an adversarial process; we should all be attempting to help the farmer.

Most importantly, the FmHA officials at the county and State level need to approach the implementation of this law as an opportunity to provide badly needed help to tens of thousands of farmers who need that help to save their farming operations. Delinquent farmer-borrowers are not bad people, and they are not deadbeats who are trying to cheat the agency out of its money. They are hardworking farm families who, because of low commodity prices and other conditions largely not of their making or under their control, have been unable to meet their financial obligations to repay FmHA.

Congress has decided that many of these people deserve another chance, and has defined the conditions under which their loans should be restructured. If FmHA nationwide will adopt this helpful perspective, as they have generally done in my home region, then the Agricultural Credit Act of 1987 will work as Congress intended and many farmers will be able to restructure their debt and remain on the farm.

Thank you for the opportunity to share my views on this matter with you.

[The letters referred to by Mr. Porch follow:]

SMITH, CROSS, BEASLEY & SIR,
Nashville, TN, May 5, 1989.

Senator ALBERT GORE, Jr.,
Senate Russell Office Building, Washington, DC.

DEAR SENATOR GORE: Enclosed you will find a copy of correspondence to Mr. Johnny Crow, State Director of the Farmers Home Administration in Tennessee regarding the practice of unilateral scheduling of mediation meetings available to borrowers under the Agricultural [Credit] Act of 1987.

Clearly, this violates the regulations, the intent of the law, and the farmers' due process rights.

We would appreciate your seeing that this practice is discontinued, and specifically that we be allowed to reschedule the meeting in the case of Elizabeth B. Lamb.

If you have any questions, please let me know.

Sincerely,

MARTIN SIR.

P.S.—I am informed that this practice is common throughout the State so therefore I am requesting that the National Save the Family Farm Coalition include this correspondence in their testimony to be presented to the Rural Credit Subcommittee of the House Agriculture Committee on May 9, 1989.[1]

SMITH, CROSS, BEASLEY & SIR,
Nashville, TN, May 5, 1989.

Senator JIM SASSER,
Senate Russell Office Building, Washington, DC.

DEAR SENATOR SASSER: Enclosed you will find a copy of correspondence to Mr. Johnny Crow, State Director of the Farmers Home Administration in Tennessee regarding the practice of unilateral scheduling of mediation meetings available to borrowers under the Agricultural [Credit] Act of 1987.

Clearly, this violates the regulations, the intent of the law, and the farmers' due process rights.

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MARTIN SIR.

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[1] This reference should be to the Subcommittee on Agricultural Credit of the Senate Committee on Agriculture, Nutrition, and Forestry.

P.S.—I am informed that this practice is common throughout the State so therefore I am requesting that the National Save the Family Farm Coalition include this correspondence in their testimony to be presented to the Rural Credit Subcommittee of the House Agriculture Committee on May 9, 1989.

SMITH, CROSS, BEASLEY & SIR,
Nashville, TN, May 5, 1989.

Mr. JOHNNY CROW,
State Director, Farmers Home Administration, Nashville, TN.

Re: Elizabeth B. Lamb.

DEAR MR. CROW: My above-referenced client was recently advised that her mediation meeting had been scheduled for May 22, 1989, by U.S. Arbitration Midsouth, Inc. of Louisville, Kentucky.

This date was unilaterally chosen by the arbitration company without first consulting with either me or Ms. Lamb, even though I had requested that I be consulted before having the meeting set. (See copy of certified letter dated March 30, 1989, to Mr. Ted Allen, Farmers Home Administration County Supervisor.)

As soon as I heard the date of the mediation meeting from Ms. Lamb, I immediately called the U.S. Arbitration office to determine if the meeting could be rescheduled.

I was informed by Michelle in that office that it could be rescheduled upon my payment of $75 to the U.S. Arbitration Midsouth, Inc.

The next day, I responded to U.S. Arbitration Midsouth and spoke with Mr. Ted Spiegel and informed him that we would pay the $75, but under protest.

He informed me that they had changed their mind and that they were not going to reschedule this mediation meeting at any cost.

Mr. Frank Rogers, Chief of Farmer Programs, of your office, also informed me that the meeting would not be rescheduled.

I am unable to represent my client on that day because I had previously scheduled several Motions which are to be heard in the Circuit Court of McMinn County, Tennessee on that day. It would be physically impossible for me to attend the motions and also attend the arbitration meeting.

These Motions have been set since April 14, 1989, and involve five different attorneys. (See copy of letter enclosed from David F. Harrod to the Circuit Court Clerk.)

Ms. Lamb has the right to have her attorney be present with her at this mediation meeting according to FmHA Instructions 1951.912.

This same rule further states ". . . when a mediator is available the County Supervisor will *assist* the mediator in *scheduling* a meeting with the borrower and all of the borrower's undersecured creditors."

Implied in this rule is the basic requirement of due process and equal protection so that the meetings would be rescheduled if the borrower's attorney has a prior conflict, especially in a situation like this case where I informed FmHA to contact me before setting the date of the meeting.

Please let me know immediately whether Mr. Rogers' decision and the decision of the U.S. Arbitration Midsouth, Inc. will be reversed so that a date can be coordinated as requested in my original letter.

Sincerely,

MARTIN SIR.

EDITOR'S NOTE: The letter dated March 30, 1989 to Mr. Ted Allen, Farmers Home Administration County Supervisor and the letter from David F. Harrod to the Circuit Court Clerk will not be a part of the printed hearing record.

SMITH, CROSS, BEASLEY & SIR,
Nashville, TN, May 5, 1989.

Ms. CATHY OZER,
National Save the Family Farm Coalition, Washington, DC.

DEAR MS. OZER: Enclosed is correspondence regarding the mediation program in Tennessee which I would appreciate your presenting in your testimony on May 9, 1989 before the Rural Credit Subcommittee.

Thank you for your cooperation in this matter.

Sincerely,

MARTIN SIR.

PREPARED STATEMENT OF DONNA SHOOP, DIRECTOR, FARM COUNSELING SERVICES, INC., MEMPHIS, MO

OVERVIEW AND INTRODUCTIONS

Distinguished Senators, I am pleased to have this opportunity. I am Donna Shoop of Memphis, Missouri. My husband Bill and I are corn, soybean, wheat, and hog producers. I represent today Farm Counseling Service, Inc. of Missouri. This is an organization that was developed by farm families to facilitate improved borrower-lender relationships. By the process of learning procedure and policy, we began representing, as counselors and mediators, farm borrowers experiencing financial difficulty. We have continued to do that since the office was established in 1984. Since that time our office staff has worked with approximately 1,000 farm families directly with their lenders and countless numbers through workshop and our monthly publications. I am also the National Secretary of the American Agriculture Movement, Inc., an alternate National Delegate for American Agriculture Movement of Missouri, a board member of Missouri Interfaith Coalition on Rural Issues and a board member of United Methodist East Conference Rural Crisis Task Force of Missouri.

I thank you for the opportunity to appear before you today and present the views of Farm Counseling Services, Inc. on the effects of the Farmers Home Administration's Debt and and Loan Restructuring System (hereafter referred to as the DALR$'s program). These views are shared by the Missouri Interfaith Coalition on Rural Issues, American Agriculture Movement, Inc. of Missouri, Farm Alliance of Missouri and the National American Agriculture Movement, Inc.

The intent of the Agricultural Credit Act of 1987 was clearly to set forth legislation that would enable every farm family the opportunity to be restructured if it would be less costly to the Government than foreclosure or liquidation. The Farmers Home Administration's intent to comply with this legislation is evident in their own policy which states: "The intended effect is to facilitate keeping borrowers on the farm to the maximum extent possible. To respond to rural farm problems throughout the Nation. . . . To reduce the inconsistencies in interpretations of regulations and provide more guidance to the FmHA field staff. . . . Any further delay in implementing these regulations would be thwarting congressional intent." (Federal Register Vol. 53, No. 178, published September 14, 1988.)

Our concerns deal not with the policy or the legislation but with the broad interpretation of existing regulations. Regulations that we feel if fully implemented at the county level would provide for more families qualifying for restructuring. It is our intense hope that by way of the testimony I share with you today we will bring to the attention of our policymakers a clear and concise difference between intent and reality. It is our further desire to entice the Senate and Congress into quick and decisive action by way of this testimony.

In Missouri there are 8,915 FmHA borrowers. By November 29, 1988, 3,266 or 37 percent of these borrowers received 1951-S (DALR$'s). Since that date a number of family farmers have requested the packet. Several more draw near the 180 day delinquency period of June 31, [30] 1989 and will be receiving 1951-S in July. "A never ending story" as one of our State FmHA officers puts it.

To date, 2,966 borrowers applied for restructuring and an additional 300 1951-S packets were returned to FmHA by the post office with no forwarding address. Of those borrowers responding 14.56 percent or −432 borrowers qualified for restructuring. These borrowers qualified under the following methods: rescheduling, restructuring, deferral, reduced or limited resource interest rates, conservation easements, softwood timber or write-downs. Only 6 percent of those borrowers who applied for restructuring had restructuring write-downs. (See attachment—written testimony—Special Manual Report of Farmer Programs Servicing Activities dated April 21, 1989.)

Of the remaining 2,534 borrowers, 34 filed bankruptcy, 201 paid current, 24 paid in full, 139 were collection only borrowers who have requested debt settlement, and 743 don't qualify for restructuring. This leaves 47 percent or 1,402 borrowers unaccounted for at this point in time.

For the purposes of Farm Counseling's testimony we would share our concerns on 25 percent or 743 of the 2,966 borrowers who applied for restructuring but who didn't qualify for restructuring. I will be presenting data from a Farm Counseling and Missouri Interfaith Coalition Survey of 3,000 borrowers that received the DALR$'s packet.

Further written testimony will be submitted by the Interfaith Coalition of Missouri who is currently processing their data and the results. It is hoped that this testimony will be submitted within the next 2 weeks. Our concerns are: attachment—FmHA instruction 1924-B, Missouri AN No. 723 (1924).

I. PLAN DEVELOPMENT UTILIZING HISTORICAL AVERAGES

FmHA regulations direct that the County Supervisor should consider disaster yields when comparing historical production to the projected plan. As in 1924.57(d)(1) "If the applicant's disaster year's yields are less than the county average yield, county average yields will be used for that year." The Missouri AN 723 (1924) dated December 16, 1988, provided a county by county declaration of the history of disaster years by county.

Regardless of these regulations County Supervisors did not inform borrowers of the opportunity to use county averages in place of disaster years or adjust averages to county average after the plan was being reviewed by the County Supervisor. Thereby many crop yields reflected actual 5-year production yields, when had the disaster years been considered, the averages may have been increased by as much, or more than, 10 bushels per acre.

Crop insurance is a requirement by most lenders who provide input costs. It has been since the drought of 1983. The crop insurance depending on the premium paid by the farmer provides protection against maximum losses. If the borrower pays the premium for a 25 bushel floor and his yield is only 8 bushels per acre the crop insurance will make up the difference between the yield floor and the actual production. However, the County Supervisor does not take this into consideration even though it is a loan prerequisite with FmHA to provide crop insurance. In this case actual production is as low as 18 in some cases but if the crop insurance were considered the farmers is guaranteed 25 bushels per acre.

Major changes such as Conservation Reserve Program (hereafter referred to as CRP), reduction in livestock enterprises, and loss of rental property will rapidly affect the expense-to-income ratio when considered. The above mentioned changes decrease the amount of expense necessary to generate a dollars income. CRP virtually has no expense on the income it provides after the first year's seeding. Not to mention the fact that the net profit margin on the remaining acres increases because of the retirement of marginal or poor crop producing acres. This can reduce the expense-to-income ratio by as much as 20 percent to 30 percent and yet changes the farmer made to increase his viability position are not considered when projecting his viability in the future. (Attachment—Missouri AN No. 710 (1924), Suggested Prices to Use for 1989 Farm and Home Plans.)

Commodity prices being used in the plans are another consideration. County Supervisor are utilizing the low figure in all plans contrary to State guidelines which project commodity price ranges. This difference is as much as .50 per bushel on soybeans, .20 per bushel on corn and .10 per bushel on wheat.

The results of our survey of clients who received 1951-S strengthen this testimony:

(1) 38.52 percent were not told they could use county averages in place of disaster years.

(2) 76.30 percent had major changes in their operations that were not considered in the past history used to develop the plan.

(3) 50.37 percent were given no explanation as to what expense-to-income ratio means and how it would affect their operation.

The effects of not utilizing regulations concerning the above mentioned are dramatic. Each of these considerations will affect the ending dollar amount or the balance available. After all considerations the balance available is the one and only figure that the County Supervisor enters into the DALR$'s program to calculate plan feasibility.

Thus our point: How many of the 743 borrowers who did not qualify for restructuring, would have qualified if they were actually given "every opportunity to be restructured?"

II. SECURITY AGREEMENTS

Directives from the national offices to the State office tell us that it is not necessary to sign new security agreements prior to the DALR$'s program being run on a borrower. However, many County Supervisors are instructing borrowers that they must sign the new security agreement, which includes not only base security but all growing and hereafter acquired crops, livestock and general intangibles, before DALR$'s can be run. Additionally, County Supervisors are securing CRP assignments from the borrower prior to the completion of DALR$'s. Again, the national office and the State office say that this is not the case but they let the County Supervisor off the hook by stating they can get the security agreement signed on the basis of the annual yearend analysis. Nowhere on the 1951-S packet does it mention "YEAREND ANALYSIS." In many cases this premature signing of the security agreement and CRP assignment are resulting in the borrower's crop, livestock and other income being tied up with FmHA and no restructuring has occurred or will occur.

The real concern here is if the farmer can't offer his crop as security to another creditor he will not obtain operating money and therefore will not be going to the field. Another concern is that this effectively denies the borrower the legal right he has to utilize chapter 12 bankruptcy. With no security to offer for operating purposes he will be unable to operate a plan under the protection of bankruptcy. This absolutely closes all options available to the farmer except liquidation. In our opinion this does not represent a strong desire or commitment to keep as many borrowers on the farm as possible.

The strongest concern we could voice is regarding the borrower's inability to go to the field and losing 1 year's production. The mediation and appeal process for most of these borrowers are just beginning in the State of Missouri. (Attachment—FmHA Instruction 1951-S exhibit J of subpart S, page 4.)

By FmHA's own instruction—other methods of restructuring can be considered—"If a restructuring plan is not found to keep the borrower on the farm, the borrower, FmHA County Supervisor, and other lenders may reevaluate/rework the borrower's farm plan to increase income, reduce other debt, sell nonessential assets, improve security on FmHA debt, and consider softwood timber loans and conservation easements (if not originally requested by the borrower) and is permitted by program regulation."

It would seem that this would be the most commonsense place to ask for the new security agreement, CRP assignment and other such improvements in security. Rather than prior to the start of the process when there is no idea as to the feasibility of the plan and whether agreements will be reached.

The results of clients surveyed strengthen this testimony:

(1) 12.59 percent signed new security agreements prior to DALR$'s being run.

(2) 25.93 percent of those who signed received no explanation as to what it was or what it would mean to their farming operation if they could not be restructured.

(3) 72.59 percent did not sign new security agreements but in almost every case they were asked if they would sign.

(4) 80.74 percent had their 1988 actuals completed or their yearend information prior to going into the first appointment.

We have two cases involving this type of situation that the national office has requested the opportunity to review.

Thus our point: Little good it will do a borrower to be restructured in appeal or mediation if, by the time all is settled and restructuring takes place, the planting season has expired. The loss of 1 year's crop will completely devastate any plan the borrower would be able to put together.

III. EXPLANATIONS/RAMIFICATIONS OF THE PROGRAM TO BORROWER

(Attachment—tele-mail December 9, 1989—November 29, 1988—December 6, 1988—From the Missouri State office FmHA AN No. 1844 (1951) attachment A.)

"Failure to accomplish the task as set forth in regulations and in the FULL SPIRIT OF THE LAW can result in future court actions which may prevent the agency from providing the servicing action necessary to assist borrowers to resolve their financial difficulties."

The county offices should handle borrowers seeking assistance in filling out the forms for the 1951-S servicing packets in the following manner:

"(1) Explain to the borrower that it is their primary responsibility for completion of the forms.

"(2) If they have some pressing questions, try as best as you can to answer them and be responsive and sympathetic.

"(3) Explain up front your time is limited and set some timeframes in which they can ask questions. . . . We still want the primary responsibility of completion of the forms to rest with the borrower. You may want to consider having group meeting with borrowers to explain the process as well as special interest groups who indicate interest in the process. We know the process will be time consuming and we need to be sympathetic to borrowers needs. It is important that the borrower and the public is aware that we will be doing everything we can to keep the borrower in business. Some borrowers will be frustrated . . . that all our new tools may not solve their problems . . . but they should know we looked at all avenues . . . so that when they walk away, they will at least know we have tried."

It is enough to explain that in fact very little of the information the farmer provided was used. The County Supervisor reworked almost the entire packet contrary to the "primary responsibility lies with the borrower" as stated above. Little if no explanation was given on the program and its various means of restructuring.

The results of clients surveyed strengthen this testimony:

(1) 51.11 percent of the borrowers set through the County Supervisor reworking the plan and their historic averages.

(2) 47.41 percent report that the term DALR$'s wasn't explained nor were its implications.

(3) 37.04 percent report that softwood timber was not explained.

(4) 51.85 percent report that conservation easements were not explained.

(5) 38.52 percent report that net recovery and its ramifications were not explained.

(6) 45.93 report that the net recovery recapture agreements were not explained.

(7) 47.41 percent report that shared appreciation was not explained.

(8) 50.37 percent did attend workshops to secure answers and help in getting the forms filled out.

(9) 38.52 percent are not aware of the appeal process.

(10) 48.89 percent were not instructed nor have they consulted with a CPA regarding tax consequences of any write-downs.

(11) 71.85 percent of the borrowers responding were not present when the DALR$'s was run.

(12) 34.07 percent of the borrowers responding were not given the opportunity to review the plan the County Supervisor prepared.

Thus our point: How can a borrower determine a sound financial direction or feel that he was given every opportunity to restructure if he doesn't even know what the process is or what tools were actually available to him?

IV. Fish and Wildlife—Leaseback/Buyback

(Attachment—Agricultural Credit Act of 1987 sec. 354. Transfer of Inventory Lands and sec. 610(2)(b) Disposition and Leasing; Food Security Act of 1985 sec. 1314 Disposition and Leasing of Farmland; Executive Order 11988—Flood Plain Management and Executive Order 11990—Protection of Wetlands; and FmHA AN No. 1727 (1955), February 12, 1988.)

Under the leaseback/buyback options of the Preservation Loan Service Program (1951-S), the farmland which may have been foreclosed or conveyed back to Farmers Home Administration must be offered back to the previous owner, or his spouse or family, or to the previous operator, in that order. However, because of the memorandum between FmHA and Fish and Wildlife agencies, this is not the case. There is repeated reference to the priority of the leaseback/buyback option under first right of refusal, starting with the previous owner, in the Agricultural Credit Act of 1987. This act also gives the Secretary the authority to transfer inventory land to any Federal or State agency, for conservation purposes, any real property, "with respect to which the rights of all prior owners and operators have expired." However, FmHA's AN No. 1727 (1955) released February 12, 1988, ". . . requires that appropriate restrictions be placed on the use of FmHA property containing flood plains or wetlands. . . . the use of affected properties stem from Executive Order 11988, Flood Plain Management and Executive Order 11990, Protection of Wetlands." However, the Executive Orders 11988 and 11990 were actually released in "1977." Under Protection of Wetlands—it clearly states in section 5—"each agency shall consider factors relevant to a proposals effect on the survival and quality of the wetlands, among these factors are (b) maintenance of natural systems, including conservation . . . and food and fiber resources . . ." and section 7(c) the term "wetlands" means those "areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes. . . ."

Conservation easements were also covered in the Food Security Act of 1985, giving the Secretary the right to take easements to protest wetlands and wildlife, referring wetlands to section 1201(4)(B) "Wetland shall not be considered converted wetland if production of an agricultural commodity on such land during a crop year—(i) is possible as a result of a natural condition, such as drought; and (ii) is not assisted by an action of the producer that destroys natural wetland characteristics." Fish and Wildlife agencies have taken priority over the previous owners when it refers to inventory property held by Farmers Home Administration. We feel this is contradictory to the law, the Agricultural Credit Act of 1987, which was signed January 6, 1988. We realize the importance of the preservation of ground water and conservation of the soil, however, this should be accomplished between the farmer and the agencies after he has redeemed or been given the opportunity to redeem his options to purchase "all" of his farm, instead of merely a portion of his farm.

Case one is reference to this problem, FmHA offered a farm back to the previous owner with several restricted areas. They have restricted as much as 67.6 acres of a 330 acre farm with one restricted area being a waterway which the farmer had installed years previously. This particular example did not have a creek or standing water on the farm, all the waterways, gullies and pasture merely sloped and the water ran off. Easements were taken to get to these areas, which would have to be fenced. These fenced easements will cut the farmer off from one field entirely.

Case two was a farmer who had two different tracts of land he was trying to buy back from FmHA under the previous owner right of redemption and discovered one farm (410 acres) would not be offered to him at all.

Case three is a farmer who was a previous operator and has worked with FmHA for several months to buy back a farm he has farmed for years. He has had three different proposals offered to him, only to have FmHA change their mind on all three. The bottom land on this farm in question has been cropped for at least 44 years.

Thus our point: "Every opportunity to keep the farmer on the farm." Was Congress aware that this would mean the farm after Fish and Wildlife secures the portion they want?

V. MISCELLANEOUS (APPRAISALS, MEDIATION AND OTHER CONCERNS)

According to a Missouri Special Manual Report of Farmer Programs Servicing Activities dated April 21, 1989, 245 borrowers have requested mediation. In conversing with the group who has been hired to act as the mediators, a very large percentage of these are in District 3 in northeast Missouri. As of May 5, 1989, they could not schedule any more mediation meetings because more funds and more time would have to be allotted. Mediation will probably be the most important opportunity left for the farmer who has been denied restructuring. It will most likely be his last chance to negotiate with his lenders and with FmHA in order to make changes in his debt and farm operation which may increase the viability of his operation by generating a positive projected plan. One County Supervisor told our office it was the borrowers responsibility to work with other creditors and that his job in mediation was to sit back and listen.

Our survey indicates that 40 percent of the respondents have requested mediation.

There have been reports indicating vast increases in appraisals from the fall of 1988 to the spring of 1989. Most increases have been around 20 percent, however, we did have one borrower with an increase of 230 percent.

(1) Respondents to our survey indicate 25.19 percent have experienced increases.

Our question is: Are these actual increases in value substantiated by the market or were they increased to strengthen the net recovery value?

SUMMARY

In order to provide an opportunity for the borrowers themselves to be heard the following are selected comments from the survey. The entire comment section can be read in the written testimony.

"The appraisal on 150 acre tract was raised to $232 per acre to $369 per acre between August of 1987 and March of 1988."

This was a 62 percent increase for this farm borrower in a 7 month period.

"The drought and dairy buyout both effected us drastically but these were not considered when figuring expense-to-income ratio for the past 5 years. We are now beef producers."

"I don't agree with FmHA taking equity in afteracquired property and adding it to net recovery buyout when all of this property was acquired after I was UNABLE to BORROW FROM FmHA any longer."

"I went through the whole process without knowing what was going on."

"It would take a book to write about what they have done to me."

"I feel the DALR$ program is not being processed to the full extent for all farmers."

"It has caused a divorce at my home."

"We are waiting for 'mediation' always its wait . . . wait . . . wait . . . till you feel you are on death row."

"It is a railroad job on appraisals."

"COUNTY SUPERVISOR SAID I WAS NOT ELIGIBLE FOR THE RESTRUCTURING BECAUSE I WAS IN BANKRUPTCY."

"They quit me not vice a versa."

"County Supervisor told us to ignore INTENT TO ACCELERATE LETTER."

"Anything we acquire they insist on having a lien on even if its a gift or inheritance."

CONCLUSION

In conclusion the intent and reality are very far from being one and the same. Answers are very hard to find or at least no one wants to commit themselves to what is regulation and what is in the so-called "gray area." We no longer have a Truman "the buck stops here" philosophy. When problems arise we are told to utilize the system. We have complied with this request for the last 5 years and are still complying. The response to problems such as those outlined above have become a roundrobin. Its passed up from the county, to the district, to the State and then to the national office only to be handed back to the County Supervisor and his discretion.

The above testimony is the hard cold reality of clear intent to appear in compliance with the law and yet maintain the same old standard that bad managers are bad managers and should be off the land. The testimony and accompanying survey represents farm borrowers with an average of 24.33 years experience.

This testimony calls on our Nation's leaders to ensure compliancy of the Agricultural Credit Act of 1987 in its entirety not just enough to be called a compliance and in some cases vagrant and gross deviations from compliancy. No other industry has bled in the 1980's as much as the family farm industry. Congress intended that they be given every chance, every opportunity to continue on the farm. We challenge and submit that while the regulations are in place to provide that opportunity the actual delivery of each and every opportunity is not being extended to the borrower by the Farmers Home Administration.

I sincerely thank you for the opportunity to appear before you here today and provide the testimony that you have so patiently listened to. Thank you.

[Attached material follows:]

MAY 5. 1989
DALR$-FMHA PRELIMINARY RESULTS ONLY
POLICY AND PROCEDURE EFFECTIVENESS,
(SEE ATTACHED SURVEY)
FARM COUNSELING SERVICES, INC
102 EAST MADISON
MEMPHIS, MISSOURI
63555

CONTACT DONNA SHOOP 816-465-7232

NUMBER OF RESPONDENTS: 135

QUESTIONS:	YES	%	NO	%	N/A	%
1 NEW SECURITY PRIOR TO DALR$	17	12.59%	98	72.59%	22	16.30%
SECURITY DOCUMENTS EXPLAINED	10	7.41%	35	25.93%	90	66.67%
2 NEW FARM PLAN (YOURS COMPLETE)	69	51.11%	52	38.52%	14	10.37%
3 WHERE YOU PRESENT WHEN DALR$ RUN	17	12.59%	97	71.85%	21	15.56%
4 REVIEWED CS CHANGED PLAN	53	39.26%	46	34.07%	36	26.67%
5 COUNTY YEILDS IN PLACE OF DISASTER	38	28.15%	52	38.52%	45	33.33%
6 OPERATING CHANGES-CRP,LS,LAND LOSS)	103	76.30%	12	8.89%	19	14.07%
7 DRAMATIC INCREASE IN APPRAISALS	34	25.19%	78	57.78%	22	16.30%
8 SECURITY DISCREPANCIES	21	15.56%	100	74.07%	14	10.37%
ABOVE CLEARED UP WITH FMHA	7	5.19%	18	13.33%	110	81.48%
9 DALR$ PROGRAM EXPLAINED	39	28.89%	64	47.41%	32	23.70%
SOFTWOOD TIMPER EXPLAINED	54	40.00%	50	37.04%	31	22.96%
CONSERVATION EASEMENT EXPLAINED	36	26.67%	70	51.85%	29	21.48%
NET RECOVERY EXPLAINED	54	40.00%	52	38.52%	29	21.48%
NET RECOVERY RECAPTURE AGREEMENT	42	31.11%	62	45.93%	32	23.70%
SHARED APPRECIATION EXPLAINED	37	27.41%	64	47.41%	34	25.19%
EXPENSE TO INCOME RATIO EXPLAINED	32	23.70%	68	50.37%	33	24.44%
10 ATTENDED WORKSHOP	74	54.81%	54	40.00%	7	5.19%
11 APPROVED FOR RESTRUCTURING	32	23.70%	71	52.59%	32	23.70%
12 WRITE DOWN TO NET RECOVERY	50	37.04%	48	35.56%	31	22.96%
13 MEDIATION LETTER RECEIVED	54	40.00%	65	48.15%	6	4.44%
14 INTENT TO ACCELERATE RECEIVED	28	20.74%	82	60.74%	25	18.52%
15 ARE YOU AWARE OF APPEAL PROCESS	57	42.22%	52	38.52%	31	22.96%
16 HAVE YOU REQUESTED APPEAL	14	10.37%	48	35.56%	73	54.07%
17 ACTUALS 1988 COMPLETED PRIOR TO FMHA	109	80.74%	17	12.59%	20	14.81%
18 CONSULTED WITH CPA-TAX CPMSEQUENCES	61	45.19%	66	48.89%	8	5.93%

COMMENTS: (TAKEN FROM THE COMMENT SECTION OF EACH QUESTIONARE)
CHOSE NO MEDIATION -NO OTHER UNSECURED CREDITORS BESIDE FMHA.
DIFFICULTY FINDING A CPA WHO IS QUALIFIED
PRESENT AT FIRST DALR# RUNNING NOT THE SECOND ONE WHICH FMHA USED
FILED CHP 7 IN 87 TO PREVENT FMHA - FORECLOSING NOW TRYING TO BUY BACK
WENT THROUGH PROCESS WITHOUT KNOWING WHAT WAS GOING ON"
NO EXPLANTION OF PROGRAMS"
"I DON'T AGREE WITH FMHA TAKING EQUITY IN AFTER AQUIRED PROPERTY AND
ADDING IT TO NET RECOVERY BUYOUT,WHEN ALL OF THIS PROPERTY WAS
AQUIRED AFTER I WAS UNABLE TO BORROW FROM FMHA ANY LONGER.
"THEY QUIT ME NOT VICE VERSA!"
COMPLICATED PROCESS
CS TOLD US TO IGNORE INTNET TO ACCELERATE LETTER
ANYTHING WE ACQUIRE THEY INSIST ON HAVING A LIEN ON EVEN IF ITS
A GIFT OR INHERITANCE
"THE APPRAISAL ON 150 ACRE TRACT WAS RAISED FROM $232 TO $369
PER ACRE BETWEEN 8-87 AND 3-88
THE DROUGHT& DAIRY BUYOUT BOTH AFFECTED US DRASTICALLY BUT THESE WERE
NOT CONSIDERED WHEN FIGURING EXPENSE TO INCOME RATIO FOR THE PAST 5 YEARS
WE ARE NOW BEEF PRODUCERS
REALLY USING LOW YIELDS IN LIVINGSTON CO.
IT IS IMPOSSIBLE TO OBTAIN MONEY FOR A NET RECOVERY BUY OUT
WITH THE ABOVE SITUATION UNLESS YOU CAN OBTAIN A UNSECURED LOAN
IT WOULD TAKE MORE THAN A BOOK TO ADD MY COMMENTS
FMHA HAS KEPT US IN THE DARK
I THINK THEY ARE OUT TO SELL US ALL OUT!!!!
IT WOULD TAKE A BOOK TO WRITE ABOUT WHAT THEY HAVE DONE TO ME
I HATE FMHA!
I FEEL THE DALR$ PROGRAM IS NOT BEING PROCESSED TO THE FULL EXTENT
FOR ALL FARMERS
TOLD ACS HE WOULDN'T SIGN IT UNTIL IT CASHFLOWED,
ACS SAID HE NEEDED TO SIGN TO PROCEED.
IT HAS CAUSED A DIVORCE AT MY HOME!
WE ARE WAITING FOR "MEDIATION" ALWAYS ITS WAIT, WAIT, WAIT, TILL
YOU FEEL LIKE YOU ARE ON DEATH ROW.
IT IS A RAILROAD JOB ON APPRASIALS
CS REFUSED TO REORGANIZE AN APPRASIAL BORROWER, PAID FOR - IT WAS ONE OF
FMHA CERTIFIED APPRASIERS WHICH WAS 1/2-
Fmha was good to work with, and did what I could , apprasial of land was
at county level and maachinery as put below sale level.
Bank doesnt show interest of loaning 100% of net recovery"
This process sure takes a long time.
The packet that was drawn up is so complex that even lawyers didn't
understand them, and the farmers had to find help which there wasn't any.
WE DON NOT FEEL THAT OUR C/S IS TRYING VERY HARD TP WORK OUT ANY KIND OF
WORKABLE PLAN.

March 1, 1989

Farm Counseling Service, Inc.
102 East Madison
Memphis, Missouri 63555

Dear Family Farmer,

We are sending out this questionaire to survey the status of the outcome of your DALR$ printout from Farmers Home Administration. Even though we may already have talked or met with you, please take a few minutes to answer our survey.

We will not release or use any names, however, we would like to put together a report showing how many farmers received resheduling, deferrals, restructuring with a write down, or net recovery. Several congressmen have expressed a deep interest in the outcome of this restructuring program in connection with the Agriculture Credit Act of 1987. Last month, the Missouri FmHA state office said that at that time it was estimated that 54.5% of the packets would be Net Recovery and 45.5% would be write-downs.

For those of you who are preparing to go into mediation, you are allowed to take your own counsel or mediator as well as the mediator which FmHA will assign to the case. The most important part of the mediation process is for the farmer to have his operation documented, be prepared to show how you will be able to cash flow your operation, meeting all expenses and provide for family living and payment obligations.

PLEASE ANSWER THE QUESTIONS WITH A "YES" OR "NO".........

1. Did you sign any new security agreements before the DALR$ program was run ? __________

   Was the signing of these documents explained to you at this time? __________

2. Did FmHA fill out a new Farm and Home plan when they called you in for your appointment instead of using the one in your FmHA packet? __________

3. Were you present when they ran the DALR$ program? __________

4. If the DALR$ program was run after you left the office, were you called in to review it with the County Supervisor or one of the assistants? __________

5. Were you offered the option of using county production averages in place of your production yields in disaster years? __________

inventory the estimated liquidation costs, and the amount of write-down, will be greater than states with short turn around for inventory property. The extent of the drought will also impact the number of delinquent borrowers, future prices, and repayment prospects.

Despite these uncertainties, the estimates contained in the Preliminary Impact Analysis are considered to be substantially indicative of the number of borrowers qualifying for the write-down and associated costs of debt restructuring under the preliminary regulations are revised for interim final publication. Changes in the interim final regulations are likely to affect servicing and property management procedures more than the extent of debt adjustment under the restructuring provisions. For example, the interim final regulations have been revised to facilitate assistance to borrowers rejected for restructuring. Greater use of lease-back and buy-back provisions are expected through simultaneous credit sales of both real estate and chattel. These and other impacts are considered in an addendum to the revised impact analysis.

Since these provisions are required by the Act, other alternatives were not considered.

Programs Affected

These changes affect the following FmHA programs as listed in the catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.410—Low Income Housing Loans
  (Section 502 Rural Housing Loans)
10.416—Soil and Water Loans

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded with the exception of nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loans Programs is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, (Pub. L. 91–190), an Environmental Impact Statement is not required.

Background

The Agricultural Credit Act of 1987 (Pub. L. 100–233) requires a number of changes in the Farmers Home Administration (FmHA) regulations and how we will continue to do business with our Farm borrowers. Due to the great number of changes and to expedite the implementation of the "Act," we are publishing the revisions in FmHA regulations in several separate issuances. They are as follows:

1. Section 307—County Committees

Allows one member of the County Committee to be an FmHA Farmer Program borrower and removes the requirement that a member must derive the principal part of income from farming.

This was implemented March 24, 1988.

2. Section 608—Administrative Appeals

Requires FmHA to set up a separate independent nationwide appeals system for all FmHA borrowers. This was implemented July 12, 1988.

3. A Portion of Section 611—Income Release

Provides for the release of up to $18,000 of normal income security for family living and Farm operating expenses to borrowers that have been accelerated but not foreclosed.

The FmHA field offices were notified on February 2, 1988, to implement this provision immediately.

4. Section 613—Interest Rate Reduction Program; Demonstration Project for Purchase of System Land

Provides for an FmHA guarantee of up to 95 percent of the loan if there is an interest rate reduction for the loan for Farm Credit Administration (FCA) inventory property when the Farm Credit Administration District has received financial assistance from the Farm Credit System Assistance Board.

FmHA and FCA signed a Memorandum of Understanding for this on March 3, 1988.

5. Section 619—Payment of Losses on Guaranteed Loans

Provides for FmHA to pay a lender estimated losses either through debt write-down or reorganization through bankruptcy for FmHA guaranteed loans.

6. Section 711—Improvement of Secondary Market Operations for Loans Guaranteed by the Farmers Home Administration

Provides the pooling of notes for issuing pooling certificates for sale on the secondary market.

Section 803—Sale of Rural Development Notes

Allows the borrower who signed a note the opportunity to purchase the note before the note is offered for sale. This is for community programs. It was implemented on March 14, 1988.

7. Title V—State Mediation Programs

Subtitle A—Matching Grants for State Mediation Programs

Section 501—Qualifications. Establishes the procedures and requirements for FmHA to certify a State for a State mediation program.

Section 502—Matching Grants to States. Establishes the procedures for receiving grants from FmHA for State mediation programs.

There are a number of sections of the Agricultural Credit Act of 1987 ("Act") that are very important to FmHA Farm borrowers. The Act requires their implementation. It will allow many Farm borrowers to continue to Farm and will, at the same time, assist in minimizing losses to the Government.

Since most of these sections of the Act are interrelated, they are combined into one separate issuance of regulations. Some of the sections require only minor changes in the regulations while others are major changes. The debt write-down provisions involve major additions to the regulations.

8. These Interim Rules

Proposed rules were published in the Federal Register [53 FR 18392] on May 23, 1988, with a 30 day comment period. In view of the short statutory requirement for implementing these sections of Pub. L. 100–233, only a 30 day comment period was allowed. We believe that the short implementation period required by the Act shows that Congress intended for the claimants to benefit from them quickly after considering public comments. Any further delay in implementing these regulations would be thwarting Congressional intent. Therefore, we are publishing them as an interim rule with a further comment period.

Discussion of the Revisions and the Comments Received

In response to the proposed rule, 247 respondents commented in writing by

AttATchment.

United States
Department of
Agriculture

Farmers
Home
Administration

555 Vandiver Drive
Columbia, MO 65202

April 21, 1989

Subject: Special Manual Report of Farmer Programs Servicing Activities
Due April 21, 1989

To: Administrator, FmHA
Washington, DC

ATTN: Bill Briscoe

The following is Missouri's report of activity projected through Monday, April 24, 1989, as you requested:

1. How many borrowers, who were mailed notices under 1951-S and requested primary servicing, qualified for restructuring using one or a combination of the restructuring tools listed in (a) thru (f) of question 2? 432

2. What restructuring tools were used for borrowers accepting FmHA's restructuring offers?

Method	# of borrowers
A. Rescheduling/Reamortization	351
B. Deferrals	92
C. Reduced or limited resource interest rates	210
D. Conservation easements	2
E. Softwood timber	1
F. Writedowns	158

3. How many borrowers, who were mailed notices under 1951-S and requested primary servicing, could not be restructured using one or a combination of the restructuring tools listed in question 2? 743

4. Please provide the following information on borrowers who have accepted FmHA's feasible plan or net recovery buyout proposals:

	Restructuring Writedowns	Buyout Writeoffs
A. Total dollar amount	$21,695,692	$9,722,250
B. Average dollar amount	136,451	154,321
C. Brs over $5 million (m)		
D. Brs between $1 m and $5 m		1
E. Brs between $500,000 and $1 m	2	1
F. Brs between $250,000 and $500,000	21	8
G. Brs less than $250,000	136	53
	159	63

Official Agency File Copy

Special Manual Report
Missouri
Page 2

5. Of those collection only borrowers who responded to the 1951-S notice, how many have requested debt settlement? 139

6. How many borrowers have completed, entered into or are expected to request mediation or meeting of creditors? 245

7. Of the borrowers who were sent notices under 1951-S, how many have:

A. Requested preservation rights?	78
B. Been approved for preservation rights?	1
C. Been rejected for preservation rights?	8
D. Are being processed for preservation rights?	49

8. How many cases are in appeal status? (How many borrowers have requested appeals?) 53

9. How many borrowers, who received 1951-S notices, either:

A. Paid the account in full?	24
B. Paid the account current?	201
C. What was the total dollar amount collected?	$1,637,245

1931

10. How many borrowers have filed a petition for bankruptcy after receiving their 1951-S notices? 34

If you need any additional information, please contact us.

ELDRID L. EASTERHAUS
Acting State Director

United States
Department of
Agriculture

Farmers
Home
Administration

Washington
D.C.
20250

FmHA AN No. 1727 (1955)

February 12, 1988

SUBJECT: Protecting and Enhancing Wetlands and Floodplains on Farmers Home Administration Inventory Property

TO: All State Directors, State Directors-at-Large, State Environmental Coordinators, Farmer Program Chiefs, District Directors, and County Supervisors

Purpose/Intended Outcome

This AN serves two major purposes. First, it provides field offices with recommended language for insertion in the deeds of Farmers Home Administration (FmHA) Farmer Program inventory property containing wetlands or floodplains. Second, it answers frequently asked questions regarding FmHA's responsibilities for the wetlands and floodplains that are located on these properties.

Comparison with Previous AN

There is no previous AN on this subject.

Implementation Responsibilities

Section 1955.137(a) of FmHA Instruction 1955-C and paragraph 3.b.(2) of Exhibit C of FmHA Instruction 1940-G require that appropriate restrictions be placed on the use of FmHA property containing floodplains or wetlands. Such restrictions are to be placed in leases and deeds. The requirements to place restrictions on the use of affected properties stem from Executive Order 11988, Floodplain Management and Executive Order 11990, Protection of Wetlands. The Executive Orders place affirmative responsibilities on Federal agencies to preserve and enhance wetlands and to preserve and restore floodplains in managing and disposing of Federal lands. FmHA inventory property is, of course, Federal land. Federal agencies that are not willing to protect and enhance Federally owned wetlands and floodplains through the use of restrictions are to withhold such property from lease or sale.

EXPIRATION DATE: February 28, 1989

FILING INSTRUCTIONS: Preceding FmHA Instruction 1955-C

Farmers Home Administration is an Equal Opportunity Lender
plaints of discrimination should be sent to

Rec
10-3-88

develop and implement, by rule or regulation, a system to standardize and simplify the requirements, procedures and other activities appropriate for implementing the provisions of this Order. The Secretary of the Interior shall ensure that such rules or regulations are in accord with the performance by other agencies of those functions vested by law, including this Order, in such agencies.

Executive Order 11988—Floodplain management

SOURCE: The provisions of Executive Order 11988 of May 24, 1977, appear at 42 FR 26951, 3 CFR, 1977 Comp., p. 117, unless otherwise noted.

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 *et seq.*), and the Flood Disaster Protection Act of 1973 (Public Law 93-234, 87 Stat. 975), in order to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative, it is hereby ordered as follows:

SECTION 1. Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands, and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

SEC. 2. In carrying out the activities described in Section 1 of this Order, each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget request reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of this Order, as follows:

(a) (1) Before taking an action, each agency shall determine whether the proposed action will occur in a floodplain—for major Federal actions significantly affecting the quality of the human environment, the evaluation required below will be included in any statement prepared under Section 102(2) (C) of the National Environmental Policy Act. This Determination shall be made according to a Department of Housing and Urban Development (HUD) floodplain map or a more detailed map of an area, if available. If such maps are not available, the agency shall make a determination of the location of the floodplain based on the best available information. The Water Resources Council shall issue guidance on this information not later than October 1, 1977.

(2) If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible develop-

ment in the floodplains. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in this Order requires siting in a floodplain, the agency shall, prior to taking action, (i) design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations issued in accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

(3) For programs subject to the Office of Management and Budget Circular A-95, the agency shall send the notice, not to exceed three pages in length including a location map, to the state and areawide A-95 clearinghouses for the geographic areas affected. The notice shall include: (i) the reasons why the action is proposed to be located in a floodplain; (ii) a statement indicating whether the action conforms to applicable state or local floodplain protection standards and (iii) a list of the alternatives considered. Agencies shall endeavor to allow a brief comment period prior to taking any action.

(4) each agency shall also provide opportunity for early public review of any plans or proposals for actions in floodplains, in accordance with Section 2(b) of Executive Order No. 11514, as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969, as amended.

(b) Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in a floodplain, whether the proposed action is in accord with this Order.

(c) Each agency shall take floodplain management into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate to the degree of hazard involved. Agencies shall include adequate provision for the evaluation and consideration of flood hazards in the regulations and operating procedures for the licenses, permits, loan or grants-in-aid programs that they administer. Agencies shall also encourage and provide appropriate guidance to applicants to evaluate the effects of their proposals in floodplains prior to submitting applications for Federal licenses, permits, loans or grants.

(d) As allowed by law, each agency shall issue or amend existing regulations and procedures within one year to comply with this Order. These procedures shall incorporate the Unified National Program for Floodplain Management of the Water Resources Council,[1] and shall explain the means that the agency will employ to pursue the nonhazardous use of riverine, coastal and other floodplains in connection with the activities under its authority. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order. Agencies shall prepare their procedures in consultation with the Water Resources Council, the Director of the Federal Emergency

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[1] EDITORIAL NOTE: Inactive as of Oct. 1, 1982.

Management Agency, and the Council on Environmental Quality, and shall update such procedures as necessary.

[Sec. 2 amended by EO 12148 of July 20, 1979, 44 FR 43239, 3 CFR, 1979 Comp., p. 412]

SEC. 3. In addition to the requirements of Section 2, agencies with responsibilities for Federal real property and facilities shall take the following measures:

(a) The regulations and procedures established under Section 2(d) of this Order shall, at a minimum, require the construction of Federal structures and facilities to be in accordance with the standards and criteria and to be consistent with the intent of those promulgated under the National Flood Insurance Program. They shall deviate only to the extent that the standards of the Flood Insurance Program are demonstrably inappropriate for a given type of structure or facility.

(b) If, after compliance with the requirements of this Order, new construction of structures or facilities are to be located in a floodplain, accepted floodproofing and other flood protection measures shall be applied to new construction or rehabilitation. To achieve flood protection, agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in land.

(c) If property used by the general public has suffered flood damage or is located in an identified flood hazard area, the responsible agency shall provide on structures, and other places where appropriate, conspicuous delineation of past and probable flood height in order to enhance public awareness of and knowledge about flood hazards.

(d) When property in flooodplains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, the Federal agency shall (1) reference in the conveyance those uses that are restricted under identified Federal, State or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law; or (3) withhold such properties from conveyance.

SEC. 4. In addition to any responsibilities under this Order and Sections 202 and 205 of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4106 and 4128), agencies which guarantee, approve, regulate, or insure any financial transaction which is related to an area located in a floodplain shall, prior to completing action on such transaction, inform any private parties participating in the transaction of the hazards of locating structures in the floodplain.

SEC. 5. The head of each agency shall submit a report to the Council on Environmental Quality and to the Water Resources Council on June 30, 1978, regarding the status of their procedures and the impact of this Order on the agency's operations. Thereafter, the Water Resources Council shall periodically evaluate agency procedures and their effectiveness.

SEC. 6. As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting floodplains.

(b) The term "base flood" shall mean that flood which has a one percent or greater chance of occurrence in any given year.

(c) The term "floodplain" shall mean the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year.

SEC. 7. Executive Order No. 11296 of August 10, 1966, is hereby revoked. All actions, procedures, and issuances taken under that Order and still in effect shall remain in effect until modified by appropriate authority under the terms of this Order.

SEC. 8. Nothing in this Order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

SEC. 9. To the extent the provisions of section 2(a) of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended.

Executive Order 11990—Protection of wetlands

SOURCE: The provisions of Executive Order 11990 of May 24, 1977, appear at 42 FR 26961, 3 CFR, 1977 Comp., p. 121, unless otherwise noted.

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), in order to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative, it is hereby ordered as follows:

SECTION 1. (a) Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

(b) This Order does not apply to the issuance by Federal agencies of permits, licenses, or allocations to private parties for activities involving wetlands on non-Federal property.

SEC. 2. (a) In furtherance of Section 101(b)(3) of the National Environmental Policy Act of 1969 (42 U.S.C. 4331(b)(3)) to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may attain the widest range of beneficial uses of the environment without degradation and risk to health or safety, each agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.

(b) Each agency shall also provide opportunity for early public review of any plans or proposals for new construction in wetlands, in accordance with Section 2(b) of Executive Order No. 11514, as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended.

SEC. 3. Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in wetlands, whether the proposed action is in accord with this Order.

SEC. 4. When Federally-owned wetlands or portions of wetlands are proposed for lease, easement, right-of-way or disposal to non-Federal public or private parties, the Federal agency shall (a) reference in the conveyance those uses that are restricted under identified Federal, State or local wetlands regulations; and (b) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or (c) withhold such properties from disposal.

SEC. 5. In carrying out the activities described in Section 1 of this Order, each agency shall consider factors relevant to a proposal's effect on the survival and quality of the wetlands. Among these factors are:

(a) public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion;

(b) maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and

(c) other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

SEC. 6. As allowed by law, agencies shall issue or amend their existing procedures in order to comply with this Order. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council,[1] shall be utilized to fulfill the requirements of this Order.

SEC. 7. As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting wetlands.

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[1] EDITORIAL NOTE: Inactive as of Oct. 1, 1982.

(b) The term "new construction" shall include draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after the effective date of this Order.

(c) The term "wetlands" means those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

SEC. 8. This Order does not apply to projects presently under construction or to projects for which all of the funds have been appropriated through Fiscal Year 1977, or to projects and programs for which a draft or final environmental impact statement will be filed prior to October 1, 1977. The provisions of Section 2 of this Order shall be implemented by each agency not later than October 1, 1977.

SEC. 9. Nothing in this Order shall apply to assistance provided for emergency work, essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

SEC. 10. To the extent the provisions of Sections 2 and 5 of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended.

Executive Order 12040—Relating to the transfer of certain environmental evaluation functions

SOURCE: The provisions of Executive Order 12040 of Feb. 24, 1978, appear at 43 FR 8097, 3 CFR, 1978 Comp., p. 141, unless otherwise noted.

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including Section 7 of Reorganization Plan No. 1 of 1977 (42 FR 56101 (October 21, 1977)), and as President of the United States of America, in order to effectuate the transfer of certain environmental quality functions, it is hereby ordered as follows:

SECTION 1. The transfer, provided by Section 5E of Reorganization Plan No. 1 of 1977 (42 FR 56101), of those functions relating to the evaluation provided for by Section 11 of the Federal Nonnuclear Energy Research and Development Act of 1974 (88 Stat. 1878, 42 U.S.C. 5910), from the Council on Environmental Quality and the Office of Environmental Quality to the Administrator of the Environmental Protection Agency shall be effective February 26, 1978.

SEC. 2. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfer of functions provided in

LH Attachment

(2) Medium: These loans are secured but do not have sufficient collateral value to fully protect the Government's interest.

(3) High: These loans are secured and fully collateralized; the Government's interest is fully protected.

c. Methodology

(1) Method 1 (See Section VI B of this exhibit) will be used first to develop an acceptable restructuring plan which will keep the borrower on the farm. If a restructuring plan is not found which will keep the borrower on the farm then Method 2 (See Section VI C of this exhibit for a full description) will be used to develop a restructuring plan.

(2) For both Method 1 and Method 2 loan terms will be the maximum permitted by program regulations. Also, write down amounts will be calculated so that the "Balance Available" to repay debt is equal to or as close as possible to the "Debt Repayment".

(3) Loans selected for regular deferral will remain deferred, but will be fully or partial written down if needed to obtain positive cash flow margins. Loans converted to Softwood Timber loans (if requested) will remain Softwood Timber loans and will not be written down because writing down Softwood Timber loans decreases present value.

7. If a restructuring plan is not found to keep the borrower on the farm, the borrower, FmHA County Supervisor, and other Lenders may reevaluate/rework the borrower's farm plan to increase income, reduce other debt, sell non-essential assets, improve security on FmHA debt, and consider Softwood Timber loans and Conservation Easements (if not originally requested by the Borrower and is permitted by program regulation).

Each of these measures will increase the computed present value. DALR$ will use the new/revised information provided by the borrower and the FmHA County Supervisor to assure that the restructuring of existing FmHA debt will maximize the potential for the borrower to repay debt and remain on the farm and avoid FmHA loan losses.

ITERATIVE CALCULATION PROCESS

I. EXISTING LOAN INTEREST RATES

A. Obtain status information on each loan.

The status information date (accrual date) must be a date after the last payment or other transaction on the loan.

United States
Department of
Agriculture

Farmers
Home
Administration

555 Vandiver Drive
Columbia MO 65202

[illegible] DS
TO: MO. COUNTIES
MO. DISTRICTS
Julie

TELE-MAIL

A+H.

December 9, 1988

TO: All County Supervisors and District Directors, FmHA
Missouri

SUBJECT: Working With Borrowers on Information Required to Complete FmHA Instruction 1951-S Servicing Actions

We have had some indication that borrowers have been to our county offices to seek help in filling out forms for the 1951-S servicing packets and that the county office has not been willing to offer assistance.

We believe county offices should handle those borrowers in the following manner:

1. Explain to the borrower that it is their primary responsibility for completion of the forms.

2. If they have some pressing questions, try as best as you can to answer them and be responsive and sympathetic.

3. Explain up front your time is limited and set some time frames in which they can ask questions.

4. Additionally, offer sources of expertise, like extension, interest groups, MO farms and others who can assist them with filling out the needed information.

We still want the primary responsibility of completion of the forms to rest with the borrower. We also want the county offices to be helpful and sympathetic to the borrowers' needs in so far as time can allow. We will appreciate your assistance.

Just an added note, we understand some of the newer packets for borrowers may not contain all of the exhibits that are required. The only suggestion we can offer for now is to make copies of the missing exhibits and put them with the packet.

Eldrid L. Easterhaus
ELDRID L. EASTERHAUS
Acting State Director

Attachment

United States
Department of
Agriculture

Farmers
Home
Administration

555 Vandiver Drive
Columbia MO 65202

notifications
TO THE DISTRICTS
[illegible] COUNTIES

TELE-MAIL

November 29, 1988

SUBJECT: 1951-S Notifications

TO: All County Supervisors and District Directors, FmHA

You have done a good job of getting the notices sent in accordance with the 1951-S instructions. We salute you for the promptness in meeting the task.

We now have quite a job in front of us to bring the process to conclusion. We know borrowers will have a lot of questions as well as the general public.

You may want to consider having group meetings with borrowers to explain the process as well as special interest groups who indicate interest in the process. You may even want to consider inviting representatives of special interest groups to your joint meetings with borrowers. This would be part of the process of disseminating information about the new regulations and may help in getting complete applications and farm plans returned.

We know the process will be time consuming and we need to be sympathetic to borrowers' needs. It is important the borrower and the public is aware that we will be doing everything we can to keep the borrower in business. Some borrowers will be frustrated with the fact that all our new tools may not solve their problems, but they should know we have looked at all avenues in trying to help them so that when they walk away, they will at least know that we have tried.

We appreciate the very positive manner with which you have undertaken this task. Keep up the good work. Remember, be sympathetic, a good listener, and a professional.

ELDRID L. EASTERHAUS
Acting State Director

Telemail
Attachment

December 6, 1988

12/6/88
Karen
UMC

Msg posted 12-6-88
2:54 pm Karen

TO: All County Supervisors and
District Directors, FmHA, Missouri

FROM: State Director, FmHA, Missouri

SUBJECT: UMC Extension Meetings

The University of Missouri Extension Service has scheduled several meetings throughout the State for the purpose of assisting FmHA borrowers with the notices that were went to delinquent borrowers. We understand that the purpose of the meeting is to assist the borrower in understanding the notices and the preparation of forms that were enclosed.

The meetings are scheduled for December 12, 13, 14, 19, and 20 at 7:00 p.m. The County Supervisor, District Director or District Problem Loan Specialist should plan to attend the meeting for their local area. The purpose for attending the meeting will be to answer questions that farm borrowers may have at the meeting. The meeting will be in the form of an amplified telephone conference led by Dr. Kevin Moore, UMC Farm Management Specialist, Columbia. The Extension person at the meeting sites will supervise the meeting. You will need to contact the local Extension Agent for the date and place of the meeting for your area. District Directors should coordinate the attendance of the meetings for their district.

Also, we understand that the local Extension Agents are requesting the names and addresses of all borrowers that were sent notices so that a letter can be sent regarding the meetings. County offices may give the name and address of these borrowers provided the Extension Service puts the request in writing. They must request the information under the Freedom of Information Act and state the purpose and benefit for which the list will be used, i.e. education of FmHA borrowers.

If you have any questions regarding this matter, please contact the Farmer Programs Section of the State Office.

Eldrid L. Easterhaus
ELDRID L. EASTERHAUS
Acting State Director

Command?

Hard copy to PRA +
Chief + specialists
12/6/88

Attachment

FmHA AN No. 1844 (1951)
Attachment A

FARMER PROGRAM MANAGEMENT AND SERVICING GOALS THROUGH JUNE 30, 1989

LOAN SERVICING

FmHA personnel must make every effort to help farmers resolve their financial problems. County Supervisors and District Directors must fully utilize all appropriate servicing and supervisory tools to assist borrowers to succeed.

A. The Agricultural Credit Act of 1987 has expanded Farmers Home Administration authorities to resolve delinquent Farmer Program borrower financial problems. The legislation established very specific time frames in which the Agency must begin and complete requests for servicing actions. Every resource available will need to be utilized in order to accomplish the increased workload in field offices on a timely basis. This includes the utilization of contract services. The National Office has developed two computerized programs (DALR$ and SENT) to assist in meeting these critical time frames. It is essential that these programs be used to meet the objective of completing the assigned tasks. This is an opportunity to resolve the delinquent and problem farmer program accounts. We will be closely monitored by Interest Groups, OIG, and Congress to assure that the job is done consistent with regulations and within the time frames established in the legislation. Failure to accomplish the task as set forth in regulations and in the full spirit of the law can result in future court actions which may prevent the Agency from providing the servicing actions necessary to assist borrowers to resolve their financial difficulties.

A specific goal on accomplishments relating to carrying out the Agricultural Credit Act of 1987 is not established because of specific performance criteria in the legislation and regulation, but progress will be monitored by the National Office through Farmer Program management reports and special reviews.

B. By June 30, 1989, each State Office will reduce the number of its Collection Only (CO) accounts by 80% of the total unduplicated number, noted on the quarterly Report Code (RC) 643, dated as of June 30, 1988.

Food Security Act of 1985
Exhibit C

"(A) access to the personal file of the appellant maintained by the Secretary, including a reasonable opportunity to inspect and reproduce the file at an office of the Farmers Home Administration located in the area of the appellant; and

"(B) representation by an attorney or nonattorney during the inspection and reproduction of files under subparagraph (A) and at any informal meeting or hearing.

"(2) The Secretary may charge an appellant for any reasonable costs incurred in reproducing files under paragraph (1)(A).".

(b)(1) The Secretary of Agriculture shall conduct a study of the administrative appeals procedure used in the farm loan programs of the Farmers Home Administration.

(2) In conducting such study, the Secretary shall examine—

(A) the number and type of appeals initiated by loan applicants and borrowers;

(B) the extent to which initial administrative actions are reversed on appeal;

(C) the reasons that administrative actions are reversed, modified, or sustained on appeal;

(D) the number and disposition of appeals in which the loan applicant or borrower is represented by legal counsel;

(E) the quantity of time required to complete action on appeals and the reasons for delays;

(F) the feasibility of the use of administrative law judges in the appeals process; and

(G) the desirability of electing members of county committees established under section 332 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1982).

(c) Not later than September 1, 1986, the Secretary shall submit a report describing the results of the study required under this section to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

DISPOSITION AND LEASING OF FARMLAND

SEC. 1314. (a) Section 335 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1985) is amended by—

(1) striking out "Real" in subsection (b) and inserting in lieu thereof "Except as provided in subsection (e), real";

(2) in subsection (c)—

(A) striking out "The" in the first sentence and inserting in lieu thereof "Except as provided in subsection (e), the"; and

(B) adding at the end thereof the following new sentence: "Notwithstanding the preceding sentence, the Secretary may for conservation purposes grant or sell an easement, restriction, development rights, or the equivalent thereof, to a unit of local or State government or a private nonprofit organization separately from the underlying fee or sum of all other rights possessed by the United States."; and

(3) by adding at the end thereof the following new subsection:

"(e)(1) The Secretary shall to the extent practicable sell or lease farmland administered under this title in the following order of priority:

"(A) Sale of such farmland to operators (as of the time immediately before such sale) of not larger than family-size farms.

"(B) Lease of such farmland to operators (as of the time immediately before such lease is entered into) of not larger than family-size farms.

"(2) The Secretary shall not offer for sale or sell any such farmland if the placing of such farmland on the market will have a detrimental effect on the value of farmland in the area.

"(3)(A) The Secretary shall consider granting, and may grant, to an operator of not larger than a family-size farm, in conjunction with paragraph (3), a lease with an option to purchase farmland administered under this title.

"(B) The Secretary shall issue regulations providing for leasing such land, or leasing such land with an option to purchase, on a fair and equitable basis.

"(C) In leasing such land, the Secretary shall give special consideration to a previous owner or operator of such land if such owner or operator has financial resources, and farm management skills and experience, that the Secretary determines are sufficient to assure a reasonable prospect of success in the proposed farming operation.

"(D) To the extent the Secretary may lease or operate real property under this subsection, the Secretary shall, if the Secretary determines to administer such property through management contracts, offer the contracts on a competitive bid basis, giving preference to persons who will live in, and own and operate qualified small businesses in, the area where the property is located.

"(4)(A)(i) The Secretary may sell farmland administered under this title through an installment sale or similar device that contains such terms as the Secretary considers necessary to protect the investment of the Federal Government in such land.

"(ii) The Secretary may subsequently sell any contract entered into to carry out clause (i).

"(B) The Secretary shall offer such land for sale to operators of not larger than family-size farms at a price that reflects the average annual income that may be reasonably anticipated to be generated from farming such land.

"(C) If two or more qualified operators of not larger than family-size farms desire to purchase, or lease with an option to purchase, such land, the appropriate county committee shall, by majority vote, select the operator who may purchase such land, on such basis as the Secretary may prescribe by regulation.

"(5)(A) If the Secretary determines that farmland administered under this title is not suitable for sale or lease to an operator of not larger than a family-size farm because such farmland is in a tract or tracts that the Secretary determines to be larger than that necessary for family-size farms, the Secretary shall subdivide such land into tracts suitable for such operator.

"(B) The Secretary shall dispose of such subdivided farmland in accordance with this subsection.

Agricultural Credit Act of 1987

Exhibit A

SEC. 616. DISPOSITION AND LEASING OF FARMLAND.

(a) CLASSIFICATION OF PROPERTY.—Section 335(c) (7 U.S.C. 1985(c)) is amended—

(1) by inserting "(1)" after the subsection designation;

(2) by inserting after the first sentence the following new sentence: "The County Committee shall classify or reclassify real property (including real property administered by the Secretary on the date of the enactment of this sentence) that is farmland, as being suitable for farming operation for such disposition unless the property, including property subdivided in accordance with subsection (e)(5), cannot be used to meet any of the purposes of section 303 (including being used as a start-up or add-on parcel of farmland)."; and

(3) by adding at the end thereof the following new paragraph:

"(2) Notwithstanding any other provision of law, the Secretary shall sell suitable farmland administered under this subtitle to operators (as of the time immediately after such contract for sale or lease is entered into) of not larger than family sized farms, as determined by the county committee. In selling such land, the county committee shall— Contracts.

"(A) grant a priority to persons eligible for loans under subtitle A, including individuals approved for, but who, as of the date of the enactment of this paragraph, have not yet received, such loans;

"(B) offer suitable land at a price not greater than that which reflects the appraised market value of such land;

"(C) select from among qualified applicants the applicant who has the greatest need for farm income and best meets the criteria for eligibility to receive loans under subtitle A; and

"(D) publish or caused to be published three consecutive weekly announcements at least twice annually of the availability of such farmland, in at least one newspaper that is widely circulated in the county in which the land is located until the property is sold.". Public information.

(b) DISPOSITION AND LEASING.—Section 335(e) (7 U.S.C. 1985(e)) is amended—

(1) by striking out paragraph (1) and inserting in lieu thereof the following new paragraph:

"(1)(A)(i) During the 180-day period beginning on the date of acquisition, or during the applicable period under State law, the Secretary shall allow the borrower from whom the Secretary acquired real property used to secure any loan made to the borrower under this title (hereinafter referred to in this paragraph as the 'borrower-owner') to purchase or lease such property.

"(ii) The period for the purchase or lease of real property described under clause (i), by a person described in clauses (i) or (ii) of subparagraph (C), shall expire 190 days after the date of acquisition, or after the applicable period under State law.

"(iii) The rights regarding the purchase or lease of real property provided by this paragraph and accorded a person described in subparagraph (C) may be freely and knowingly waived by such person.

"(B) Any purchase or lease under subparagraph (A) shall be on such terms and conditions as are established in regulations promulgated by the Secretary.

AGRICULTURAL CREDIT ACT OF 1987
Exhibit A

(ii) by striking out "housing, farm, water and waste disposal, and community facility" and inserting in lieu thereof "such".

7 USC 1927a note. (B) CERTAIN OBLIGATIONS EXCEPTED.—The amendment made by subparagraph (A) shall not apply to any note or other obligation sold under section 1001 of the Omnibus Reconciliation Act of 1986 on or before the date of the enactment of this paragraph.

7 USC 1926 note. (2) INTEREST RATE RESTRUCTURING FOR CERTAIN OTHER BORROWERS.—Effective July 29, 1987, the interest rate charged on any loan of $2,000,000 or more made on such date under section 306 to any nonprofit corporation shall be the interest rate quoted to such nonprofit corporation by the Farmers Home Administration on June 22, 1987, in the request for obligation of funds made with respect to the loan.

(c) LIQUIDATION NOT REQUIRED AS PREREQUISITE TO DEBT RESTRUCTURING AND LOAN SERVICING.—Subsection (d) of section 331 (7 U.S.C. 1981(d)) is amended—

(1) by inserting "debts or" before "claims"; and

(2) by adding at the end of the first sentence the following: "The Secretary may not require liquidation of property securing any farmer program loan or acceleration of any payment required under any farmer program loan as a prerequisite to initiating an action authorized under this subsection.".

7 USC 2001 note. (d) SUSPENSION OF COLLECTION ACTIVITIES DURING TRANSITION PERIOD.—The Secretary of Agriculture shall not initiate any acceleration, foreclosure, or liquidation in connection with any delinquent farmer program loan before the date the Secretary has issued final regulations to carry out the amendments made by this section. The preceding sentence shall not prohibit the Secretary from taking any action with respect to waste, fraud, or abuse by the borrower. Fraud.

SEC. 616. TRANSFER OF INVENTORY LANDS.

Subtitle D (7 U.S.C. 1981 et seq.) is amended by adding after the section added by section 615(a) of this Act the following new section:

State and local governments. 7 USC 2002.

"SEC. 354. TRANSFER OF INVENTORY LANDS.

"The Secretary, without reimbursement, may transfer to any Federal or State agency, for conservation purposes any real property, or interest therein, administered by the Secretary under this Act—

"(1) with respect to which the rights of all prior owners and operators have expired;

"(2) that is determined by the Secretary to be suitable or surplus; and

"(3) that—

"(A) has marginal value for agricultural production;

"(B) is environmentally sensitive; or

"(C) has special management importance.".

SEC. 617. TARGET PARTICIPATION RATES.

Subtitle D (7 U.S.C. 1981 et seq.) is amended by adding after the section added by section 616 of this Act the following new section:

Disadvantaged persons. 7 USC 2003.

"SEC. 355. TARGET PARTICIPATION RATES.

"(a) ESTABLISHMENT.—

Attachment

For Administrative Use Only Missouri AN No.710 (1924-B)

UNITED STATES DEPARTMENT OF AGRICULTURE
Farmers Home Administration
Columbia, MO 65202

November 10, 1988

SUBJECT: Suggested Prices to Use for 1989 Farm and Home Plans

TO: All County Supervisors, District Directors, and PRA's, FmHA

PURPOSE/INTENDED OUTCOME:

To provide assistance to County Supervisors in completing 1989 Farm ar Home Plans.

COMPARISON WITH PREVIOUS AN:

This AN is provided to County Offices and District Offices on an annua basis, usually in November.

IMPLEMENTATION RESPONSIBILITIES:

Below are suggested prices for 1989 crop and livestock marketing to b used as a guide in completing 1989 Farm and Home Plans. These price were obtained by consultation with the Agricultural Economic Departmen of the University of Missouri.

Keep in mind that these prices are estimates of 1989 market prices Farm and Home Plans for 1989 should include ASCS program payments, the operator is participating in Government Programs. Transportatio and storage cost reductions should also be considered when projectin the market price(s) to be used in completing the Farm and Home Plan.

Eldrid L. Easterhaus
ELDRID L. EASTERHAUS
Acting State Director

EXPIRATION DATE: December 31, 1989

FILING INSTRUCTIONS:
Preceding FmHA instructions
1924-B

23-112 161

Suggested Prices to Use for 1989 Farm and Home Plans

Corn	bu.	\$2.50 - 2.70
Grain Sorghum	bu.	2.15 - 2.30
Wheat	bu.	3.40 - 3.60
Soybeans	bu.	7.00 - 7.50
Cotton	lb.	.52 - .55
Rice	cwt.	7.00

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
Feeder Pigs (40-50 lbs.) lb.	\$.80-.85	\$.80-.85	\$.85-.90	\$.85-.90
Market Hogs cwt.	42-46	45-49	48-52	43-47
Feeder Steers, choice lb.				
400-500 lbs.	.95-1.00	.95-1.00	.90-.95	.90-.95
600-700 lbs.	.85-.89	.85-.89	.80-.85	.80-.85
Feeder Heifers 85% of Steer Price				
Fed Cattle-Choice Steers lb.	.73-.77	.73-.77	.68-.72	.68-.72
Fed Cattle Heifers-Generally \$1 Less Than Steers				

Milk - Grade A	\$11.90 - 12.10	Testing 3.5% Butterfat
Grade B	10.90 - 11.10	

Attachement

723

For Administrative Use Only Missouri AN No. 723 (1924)

UNITED STATES DEPARTMENT OF AGRICULTURE
Farmers Home Administration
Columbia, MO 65202

December 16, 1988

SUBJECT: Five Year Disaster Declaration/Designation History

TO: County Supervisors, District Directors, PRA's, FmHA

PURPOSE/INTENDED OUTCOME: To provide information to County Offices on the history of county disaster declarations.

COMPARISON WITH PREVIOUS AN: No previous ANs have been issued on this subject.

IMPLEMENTATION RESPONSIBILITIES: The attached five year declaration/designation history is to be used to determine whether any particular year(s) should be considered as a disaster year for the applicant in developing realistic farm plans in accordance with 1924.57(d)(2). County Supervisors should review the list when developing Farm and Home Plans in order to make an appropriate yield determination in accordance with 1924.57(d)(1).

for

ELDRED L. EASTERHAUS
Acting State Director

EXPIRATION DATE:
December 31, 1990

FILING INSTRUCTIONS:
Preceding FmHA Instructions 1924-B

Attatchment

to FmHA, and a new Form FmHA 1962-1 will be developed and completed for the upcoming year of operation prior to the expiration of the existing Form FmHA 1962-1. A list will be maintained in the Management Systems Box in the Miscellaneous division in accordance with §1905.5(d) of Subpart A of Part 1905 of this chapter (available in any FmHA office). The list will include the borrower's name, the expiration date of the form, and the date for the follow-up by the County Supervisor.

(7) Verify that the plan is consistent with the applicable highly erodible land and wetland conservation requirements of Exhibit M of Subpart G of Part 1940 of this chapter.

(d) Documentation and revision of plans.

(1) Plans will be documented in sufficient detail to adequately reflect the overall condition of the operation, including the borrower's current financial condition. The borrower's projected income and expenses must be based on the borrower's proven record of production and financial management. For existing farmers, actual production and financial history for the past 5 years will be utilized. For those with less than a 5 year operating history, the applicant's available production history will be used. This will be determined by the actual yields taken from the applicant's reliable records or the Agricultural Stabilization and Conservation Service (ASCS) "actual yields." When an accurate projection cannot be made because the applicant's production history has been affected by a disaster(s) declared by the President or designated by the Secretary of Agriculture, and for those farmers who would have had a qualifying loss, as defined in §1945.154 (a)(29) of Subpart D of Part 1945 of this chapter, but were not located in a designated/declared disaster area, County average yields will be used for the disaster year(s). If the applicant's disaster year's(s') yields are less than the County average yield, County average yields will be used for that year(s). If County average yields are not available, State average yields will be used. For beginning farmers, the County Supervisor will consider ASCS records, for that particular farm, Extension Service (ES) data, County averages, State averages, or other reliable sources of data to develop the projections.

(2) Unit prices for all agriculture commodities produced commercially in each State will be established on a statewide basis by all FmHA State Directors each year, and published in a State supplement to be issued annually to comply with the farm planning season. State Directors may establish regional unit prices for different regions of a State when there are transportation costs and other factors that establish a regional pattern for unit prices within the State. In development of unit prices, the State Director

PREPARED STATEMENT OF JO ANN FORSNESS, NATIONAL FARM CREDIT CHAIRMAN, WOMEN INVOLVED IN FARM ECONOMICS (WIFE)

Senator Kent Conrad, members of the Senate Agriculture Committee's Subcommittee on Agricultural Credit, WIFE thanks you for the opportunity to testify here today. The subject of this hearing, "Agricultural Credit" is vital to all producers.

I have lived on a diversified farm/ranch for 35 years with my husband, Dewey. Our home is located near Wolf Point in eastern Montana. Our grandparents came to eastern Montana to homestead in 1910 and 1918, survived the Depression of the 1930's and these farms remain in the families at this time. My grandmother, a charter member of the Wolf Point PCA was the only woman to sit on the board of that entity.

WIFE is an independent farm organization of women dedicated to the purpose of promoting economic prosperity for family agricultural producers and preserving the family farm concept for the production of the Nation's food and fibre. We are concerned about the deplorable economic conditions that exist for this Nation's producers.

Contrary to the Farm Credit System's information and statistics, there are still enormous problems to be faced by the farm and ranch borrowers of this Nation. We sincerely believe that you know this, however, the nonfarm public is a different matter. Our members and others tell us that the new legislation just is not working, partly because there are no teeth in the law to force the FCS to comply with the intent of Congress.

Women Involved in Farm Economics is fearful that allowing the FCS the ability to have Money Market Savings program capabilities could have serious adverse effects on the borrowers. First and foremost, WIFE feels that FCS must service loans of existing borrowers in a more timely manner to stop the mass exodus of borrowers from that entity before alternative programs are adopted. Secondly, the fear exists that if borrowers place money in a Money Market account within the FCS and then face adverse conditions that the system would take those funds invested in Money Market to cure the delinquency.

The Spokane District and others are refusing to take "bail out" funds. This refusal to take "bail out" funds prohibits the system from coming under the oversight committee. Interest rates are not consistent even within a State. Interest rate reduction (paid for by the borrowers) are granted only to be raised again in a few days or months. The FCS is forcing borrowers into unwanted bankruptcies. According to the Spokane District's own statistics about 10 percent of their distressed loans are being restructured.

WIFE believes that the farm credit bill was designed to accomplish two things. The first is to have a stabilizing influence on available funds for the system and the second is to keep family farmers on the farm. The necessity for a congressional bailout of commercial banks, the Farm Credit System, and the Savings and Loan institutions are of course made necessary by the segments of the economy not being on par with other segments. All new wealth created into our Nation comes for the production of raw materials. This production after being paid for correctly, moves through the system allowing agriculture to pay its debts. Not only agriculture, but all segments would be able to pay their debts allowing lenders to have a position of solvency and our Nation to enjoy a balanced budget.

WIFE strongly opposes borrowers and lenders alike being given timeframes of 45 and 60 days in which to conduct business of the magnitude of the FmHA packets. The decisions which are to be made in these instances affect not only the current borrowers, but generations to come. Borrowers in Montana have been particularly impacted through FmHA's use of desk top appraisals. These appraisals have been done by people that in many cases have not been on the property, and are often unrealistic when compared with independent appraisals done in the same area. Borrowers appealing these unfair appraisals will have their cases heard by a former FmHA State Director in Montana. This is hardly an impartial third person.

Family structures have been impacted tremendously by the stress of dealing with the lenders. Divorces among younger families, troubled teenager, often contemplating suicide, and a marked incidence of stress related diseases in older borrowers have been a result of the past few years of trying to wash producers from the system.

[Attachment—December 1988 Position Paper on Agriculture Credit follows:]

WOMEN INVOLVED IN FARM ECONOMICS

POSITION PAPER ON AGRICULTURE CREDIT

[December 1988]

WIFE requests that the FmHA borrowers be given 45 WORKING DAYS to fill out forms dealing with foreclosures.

WIFE is concerned that the review process of loans selected for graduation is not clearly outlined to the borrowers.

WIFE opposes the rules that the FCS and the FmHA requires additional and excess security on liens above the amount to be financed.

WIFE is concerned that the FCS is not using FmHA guaranteed loans and they are therefore not passing lower interest on to borrowers.

WIFE is concerned that a borrower must apply for a lower interest rate, when they have a variable interest rate loan contract, but the FCS may raise interest rates at any time.

WIFE is concerned that new borrowers are given a lower rate of interest then established customers.

WIFE is concerned that the FCS is using a possible DEFICIENCY JUDGMENT when figuring "least cost," making it appear cheaper to foreclose.

WIFE would like to see the elimination of B stock.

WIFE would like to see interest rates be established at the time the contract for farm ownership loans (long term real estate loan) are written and that these rates not be changed at the discretion of the lender.

WIFE would like assurance that Federal funds allocated for restructuring or write-down on loans be used for that purpose and not administrative costs.

WIFE is concerned that the FCS is not complying with the intent of Congress and working to restructure loans. We would like Congress to require the FCS to follow the guidelines and intent set down in H.R. 3030 and to be held accountable to Congress.

WIFE is concerned that many of the lenders in the FCS system are lacking in training and knowledge of commercial agriculture lending practices.

WIFE would like to see the FCS achieve stability as a lender through lower interest rates, local controls and negotiating in good faith therefore establishing themselves as a reliable lender.

PREPARED STATEMENT OF SHARON K. WATKINS, WATKINS TAX ACCOUNTING, LEXINGTON, IN

WATKINS TAX ACCOUNTING,
Lexington, IN, May 18, 1989.

To Whom It May Concern:

I am writing to express my concerns with the FmHA restructuring process and other matters in relation to FmHA and the Ag Credit Act of 1987. The following are a list of my concerns with a detailed explanation attached:

1. The DALR$ program used to restructure farmers treat farmers inequitably as a result of the mechanics of the program.
2. The Net Recovery Buyout Agreement is grossly unfair to farmers as they are required to pay back not only the amount of the difference between FMV and NRV, but also all prior liens.
3. FmHA is refusing to subordinate to other creditors, resulting in those creditors foreclosing on FmHA. Specifically happening in the State of Ohio.
4. A list of the problems between farmers, FCS and FmHA in securing Guaranteed Loans.
5. General comments about the restructuring process.

Sincerely,

SHARON K. WATKINS.

Attachments.

COMMENTS FOR FmHA OVERSIGHT HEARING

Comment No. 1

The DALR$ program used to restructure farmers treat farmers inequitably as a result of the mechanics of the program. An example:

Two Farmers, labeled Number One and Number Two, owning very similar farms of 160 acres, lying side by side, with the same market value of $110,000 with a Net Recovery Value of $100,000. If Farmer Number One had a limited resource loan at 4.5 percent and Farmer Number Two had an economic emergency loan at 12 percent they both could be restructured with an annual payment of $8,779. This would meet the requirement of paying more to FmHA than liquidation would recover. But because Farmer Number One has a 4.5 percent limited resource loan his principal balance would be reduced to $142,987 and Farmer Number Two's interest rate would be reduced to 8½ percent and his principal balance would be reduced to $94,338. They both have annual payments of $8,779 but if Number One is graduated to an outside lender or for any reason needs to pay FmHA off he will be paying $48,649 more than Farmer Number Two. If this was a $300,000 loan, then the discrepancy between the two is increased to $145,947.

The above example works the same way for all restructured loans, whether or not the value is the same. The farmers with limited resource loans or any loan with a low interest rate shall have to pay off their loans at a much higher principal balance than those who were determined to have the ability to pay a higher interest rate. If they continue to pay on the loan, for the life of the loan, then they are treated the same. Both were restructured at the T-Bill rate. But very few loans are paid for the term set. Farmers with low interest rate loans are being discriminated against when they go through Restructuring, the lower the rate of interest on the original note, the more the discrepancy would be on paying off the loan.

Comment No. 2

Attached to this page is a "Net Recovery Buyout Recapture Agreement" and part of a DALR$ printout. As you will note on the DALR$ printout the value of the RE is $74,000 with a prior lien of $62,000. Mr. and Mrs. Burnette purchased FmHA's interest in their real estate for $1,855.56 and the interest in chattels for $1,605.44. Those amounts were determined by FmHA. If they convey the property for any reason during the next 2 years they would have to pay FLB, who holds the first mortgage, $62,000 and FmHA $72,144.44 for property with a fair market value of $74,000.

A simple solution is not to sell the real estate until after 2 years. But we are not always in control of our lives. There is death, condemnation by a government or public facility or many other reasons a person must transfer ownership of property. Now FmHA has stated they recognize this is a problem, and they never intended for it to be this way. The facts are—Mr. Burnette and anyone else who has settled with FmHA for Net Recovery Buyout, signed a copy of the attached agreement. FmHA has filed a mortgage for the entire amount of the Fair Market Value against the property.

Considering FmHA's past history, I am very concerned about what will happen to many farmers when the recapture agreement is exercised.

A very strong voice must be heard from Congress to remove this liability from farmers to be sure every FmHA county office in the United States takes the proper action when FmHA reverses themselves. If they do not do so willingly, Congress must take immediate steps to see this inequity of law is dealt with fairly.

[Attachment—Net Recovery Buyout Recapture Agreement and part of a DALR$ printout follow:]

[Used by permission]

[FmHA Instruction 1951-S, Exhibit C to Subpart S]

NET RECOVERY BUYOUT RECAPTURE AGREEMENT

In consideration of the Farmers Home Administration (FmHA) allowing us to purchase the real estate property securing our FmHA Farmer Program loan obligations at the net recovery value of $1,855.56 in accordance with FmHA Instruction 1951-S, we agree to pay the difference between the net recovery value of the security of $1,855.56 and the fair market value of the real estate property of $74,000 as of the date of this agreement, if we sell or otherwise convey the security within 2 years of this agreement for an amount which exceeds the net recovery value. This amount is $72,144.44. We further agree to give FmHA a mortgage or deed of trust to secure this amount for the best lien obtainable which will be subordinate to any purchase money security instrument which does not exceed the fair market value of the property to enable the borrower to purchase the property from FmHA at the net recovery value. This mortgage or deed of trust will be released 2 years from the date of this agreement if we do not sell or convey the property during the 2-year period.

We understand that the difference between the net recovery value of the real estate securing the FmHA loan obligations and the fair market value of the real estate security specified above will all be due and payable on the day of sale or conveyance if we sell or otherwise convey the real estate property within two (2) years from the date of this agreement, if we realize a gain in this transaction.

Loan Balance $213,838.30.

Amount of Buyout $3,461.

Date of Agreement: 4/26/89.

THOMAS W. BURNETTE.
PHYLLIS J. BURNETTE.

4-26-89

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FARMERS HOME ADMINISTRATION              DALR$  ANALYSIS REPORT                        DALR$ VERSION 4.1B-1/89    9/89
*************************************************************************************************************************
                                                                                         NET RECOVERY VALUE- REAL ESTATE
                 DESCRIPTION OF PROPERTY: 80 acres real estate

                   CURRENT MARKET VALUE:    74,000.00

                                        FmHA COSTS FROM FORCED LIQUIDATION

                 PRIOR LIENS
                                        CREDITOR               AMOUNT OF LIEN
                              ========================        ==============
                              FLB                                  62,000.00


                                                   TOTAL PRIOR LIENS:     62,000.00

                                                   FmHA ADMINSTRATIVE COST:      197.00
          ***************************************************************************************

                EXPENSES WHILE IN INVENTORY BASED ON INVENTORY PERIOD OF 30.50 MONTHS

          MANAGEMENT EXPENSE

                                              41.00     acres x 12.00 per acre =   1,250.50

                                                  0.00 income x 0.000  rate    =       0.00

                                    0.00 monthly mgmt cost x 30.50 months held =       0.00

          ***************************************************************************************

          OWNERSHIP COSTS

                                       TAXES-     871.00 per year x 30.50 months =   2,213.79

                                DEPRECIATION-             per year x 30.50 months =       0.00

              INTEREST COST-    74,000.00 (market value) x 7.875% per year x 30.50 months =  14,811.56

                        REPAIRS NECESSARY FOR SALE-                                =

                         (REPAIRS ARE: )

                        OTHER EXPENSES RELATED TO INVENTORY PERIOD-                =     265.00

                         (OTHER EXPENSES ARE: winter/board)

           ANTICIPATED INCREASE (+) or DECREASE IN VALUE-
                74,000.00 (market value) x  0.060 annual rate of change x 30.50 months =  11,285.00
          ***************************************************************************************

          SELLING EXPENSES

                           SALES COMMISSION-    74,000.00 x  0.000 commission rate =       0.00

                                ADVERTISING-  235.00 (cost per ad) twice annually =  1,194.58

          INCOME
                                                 0. per month x 30.50 months =       0.00
                                (INCOME IS FROM: )
                                                                              ============

                         TOTAL NET RECOVERY VALUE- 80 acres real estate                 3,352.56

       ************************************************************************************************************
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rt Prepared for: Burnette,_Thomas_W.

3. Servicing Information (continued)

NOTES ON THIS SECTION

- The "EXISTING REPAY SCHED" column indicates the type of repayment schedule on the loan BEFORE any service programs are considered. The codes are:
  - E = Equal payment schedule, the payments are the same during the entire loan.
  - U = Unequal payment schedule, payments vary from year to year, or there is a balloon installment at the end of the loan.
  - D = Payments on the Loan are fully or partially deferred.
  - T = Payments are deferred under the Softwood Timber Program.
  - S = The loan has been fully or partially set-aside.
- The "SECURITY PRIORITY FOR WRTDWN" column indicates how well FmHA is protected from loss by collateral.

  "LOW" means that either FmHA has no collateral for the loan, or that FmHA would not receive any money to put toward paying this loan if FmHA repossessed and sold the collateral.

  "MEDM" (medium) means that FmHA would receive some money to put toward paying the loan if the collateral was repossessed and sold, but the loan would not be fully paid.

  "HIGH" means that if FmHA repossessed and sold the collateral for this loan, the loan would be paid off.
- The "CONSIDER SERVICE PROGRAMS" column tells DALR$ whether to apply service programs to the loan.

  "DELQNT" means the loan is delinquent and must have service programs applied.

  "YES" means the loan is not delinquent, but service programs should be considered if necessary to find a feasible answer.

  "NO" means that service programs will not be applied to the loan by DALR$.

SOFTWOOD TIMBER PROGRAM

No acreage was entered, therefore the softwood timber program was not considered in this analysis.

CONSERVATION EASEMENT PROGRAM

No loans were eligible for conservation easement. DALR$ did not consider conservation easements.

NOTE:
The above data on Softwood Timber and Conservation Easement programs may be based on acreage estimates. If the acreages were estimated, the results of DALR$ analysis may change when the actual acreages are known.

If you have questions about the requirements for the Softwood Timber or Conservation Easement programs, please contact your local FmHA Office.

4. Net Recovery Value Information

The total Net Recovery Value of FmHA collateral is $3,461.
This includes the following deductions from the total for all properties:

ATTORNEY FEES-	1125
OTHER LEGAL EXPENSES-	200
ADMINISTRATIVE COST OF PROPERTY MANAGEMENT-	172

A breakdown of net recovery values will be found on the pages which follow.
If you have questions about how net recovery value was figured, please contact your local FmHA Office.

COMMENT NO. 3

It has came to my attention that some areas of the country are refusing to subordinate to other lenders to facilitate the farmers restructuring with the other lenders. I am not referring to FmHA giving up their position in front of other lenders, but when the FCS or others are in first position and need to rewrite the mortgage, FmHA refuses to subordinate so they may rewrite the mortgage.

Two cases were relayed to me by John Hancock Insurance. They have two farmers in Ohio they are foreclosing on even though they had worked out a restructuring plan with the farmers. FmHA refuses to subordinate so they may rewrite their mortgage. Without the subordination to retain the first mortgage they cannot do the restructuring.

The other cases I have been told about, concern the Farm Credit Service. After restructuring, it would be to the advantage of the farmer to participate in the interest write-down and guaranteed loan program. FmHA insists FCS rewrite the mortgage if the FCS is to receive a guarantee on the mortgage, but when FmHA has a second mortgage, they refuse to subordinate to FCS. Normally, FCS does a restructuring by amending the amortization schedule, but does not rewrite and file a new mortgage. By requiring a new mortgage, with the accompanying legal work-title insurance and etc., not only is FmHA preventing the farmer from participating in the GL program, but in those cases where there are no second mortgages, FmHA's requirement adds a great deal of unnecessary expense.

COMMENT NO. 4

Other problems borrowers of FCS have of receiving GL and participating in the interest write-down program is meeting the minimum working capital requirements, no purchases or sales of equipment without the prior consent of FmHA, prohibition against the borrower from assuming additional liabilities and the requirement of a set maximum debt-to-asset ratio.

Farm Credit System seems to be concerned of being put in a management position in attempting to meet the above requirements with the borrower and the resulting lender liability. The result to the farmer is he is shut out of the GL program and may not be restructured.

With the very large cutbacks in direct loan funds and Congress' insistence farmers rely more and more on other lenders through the GL program, we need a program farmers can use.

COMMENT NO. 5

In general, in the State of Indiana, I believe the restructuring of FmHA loans is doing fine. I have not found any county office not willing to work with the farmer. The problem has been, simply, ignorance on the part of the farmer and the County Supervisor. The farmer has no idea of where to start and the County Supervisors were required to learn a complete new set of rules, a complex computer program and deal with 50 percent of their borrowers in a few short weeks.

It is my understanding, in Indiana, the ratio of those farmers restructured to those farmers given net recovery buyout is close to 1:1. Even those farmers who thought they could get financing elsewhere and did not, are now given the second opportunity for restructuring with FmHA. Perhaps not as easily as the first go around, but are given the opportunity to present their case.

The problems of the local offices are compounded by the State Office and National Office of FmHA having to give answers to many new questions and not having enough time to fully research their answers. It appears, to those of us out in the field working with farmers, what seemed to be the answer to a particular question today, tomorrow when another twist is given to the question, yesterday's answer no longer fits, and you find yourself in the middle of the game with new rules-again. The resolution would have been not to send all of the "45" day letters out at the same time. July 1, 1989, another batch of letters are due to be sent out. I strongly recommend to Congress that the requirement of a "45" day letter being sent out to the borrower delinquent as of January 1, 1989, be staggered out over several months. The letters from November are still not resolved, many mistakes have been made because of the overload and soon, by law, the cycle starts again.

It would be beneficial to farmers, who will receive restructuring packages, to have better instructions for filing the requisite FmHA forms. Instructions written at the reading level of the average farmer, not a copy of FmHA instructions, which cannot be understood by a Harvard lawyer.

Another concern is those farmers whom FmHA determined need special assistance and receive limited resource interest rates are required after restructuring to pay a much higher rate of interest than the current limited resource rate. Those farmers who have the ability to pay a higher rate of interest are not paying a higher rate of interest after restructuring.

MAY 8, 1989.

Honorable KENT CONRAD,
Chairman, Subcommittee on Agricultural Credit, U.S. Senate, Washington, DC.

DEAR SENATOR CONRAD: On March 3, 1989, I left my position as State Director of the Farmers Home Administration in Colorado. However, I did not leave my interest in the Agency, its borrowers, or the Agricultural Credit Act of 1987. It is for that reason I am writing to express my concern about Congress possibly amending the Ag Credit Act of 1987 this year.

For the record, I respectfully suggest that the Congress refrain from instituting any amendments to the act at the present time. There is nothing more disturbing to the financially stressed borrowers than for some changes to come along in the middle of the process in which they are involved. I feel it would be especially disturbing now because so many borrowers are in the middle of the appeal process. For any of them to go back "to square one," or to start over at any given point, would [be] especially frustrating to them.

I have found during my 7½ years as State Director, that most of the FmHA borrowers who are in financial difficulty just want to work through the processes allowed in the 1987 act, and get on with their lives. I urge the committee to just let them do it!

Thank you for listening.

Respectfully,

RUTH M. FOUNTAIN.

PEOPLES' ACTION TO SAVE THE FAMILY FARM,
Lookout, CA, May 11, 1989.

To: Members of the FmHA Oversight Hearing Committee.
From: Gail Lennon, Peoples' Action to Save the Family Farm.
Re: FmHA problems in California.

As a Farm-Aid hotline volunteer and president of Peoples' Action, I have been closely involved in assisting farmers in their dealings with FmHA in California since 1986.

I had hoped that the 1987 Agricultural Credit Act would help the many farmers who, through no fault of their own, were in danger of losing their farms and ranches. I am disappointed.

The number of delinquent farmers in California increased from 1,093 in 1987 to 1,689 in 1988. At 50.4 percent California now has the fourth highest delinquency rate in the Nation.

Perhaps the drought may have contributed very slightly to the situation, but from talking to over 400 farmers, I found that approximately 90 percent were in trouble because of FmHA not following their own rules and regulations. Late money or no money for operating, income releases refused for essential expenses, which has caused bankruptcy, and foreclosure by first note holders.

Please imagine a full crop in the ground and loan money which was expected to harvest it not there. The results are—NO INCOME TO PAY A LOAN. Or charging your operating expenses from your local dealers because a loan was approved and then 4 months later denied, because you were not able to plant everything you had planned. Thirty-two percent of the farmers who were delinquent in 1987 went into bankruptcy that year.

Only one-fourth of delinquent farmers applied for servicing under the Agricultural Credit Act of 1987. It is a shame but understandable by advocates. The attitude is "What is the use? FmHA never does what the law says anyway."

We have found that FmHA in California had only processed perhaps one-fifth of the applications received within the 60-day time limit. Of these only 20 percent qualified for primary loan servicing. This figure transfers to less than 2 percent of delinquent FmHA borrowers qualifying. I ask you, was this the intent of Congress? Were the farmers who did not reply within the 45-day time limit correct in assuming that this law is unenforceable?

Of the farmers who have not qualified, we have noticed that the offer to purchase at Net Recovery Value is dependent on a future FmHA appraisal.

Other lenders have not been asked to a mediation meeting.

A County Supervisor recently plead guilty to fraud and bribery. It is interesting to note the delinquency rate of the offices this Supervisor served. Eighty-nine percent, 49 percent and 45 percent. The State office has been asked to assist in gathering more up-to-date figures so we would be better able to inform you. They have not answered. The State office has also been very much aware of the utter disregard of rules and regulations by local offices and the damages to the farmers which have resulted.

The answers these farmers have received to their complaints have been, "You may have a tort claim against us, we will send you the rules on how to file one."

The State office sometimes seems sympathetic, but either does not know how or does not wish to correct the mistakes that have caused these delinquencies.

Gentlemen, these farmers will continue losing their farms until you find a way to force FmHA to follow the law and also build in some type of protection for the farmer when FmHA does not. If a farmer could afford and/or find an attorney to file a tort claim, which he can't, the thought of suing his country is still distasteful to him. These are good Americans. They are being jerked around.

PREPARED STATEMENT OF CITIZENS ACTION COALITION OF INDIANA, INDIANAPOLIS, IN

We are most grateful, Mr. Chairman and members of the committee, to be able to present our concerns and comments to you today.

This is a very timely hearing to help evaluate the success of FmHA regulations in implementing the Farm Credit Act of 1987. We would like to request that this be the beginning of an ongoing oversight and monitoring process and not the final hearing. For farmers trying to utilize the debt restructuring provisions to resolve debts that have been looming over them for many years, the process is actually in the very beginning stages. No one has gone through the entire process from beginning to end. We do not know exactly how this entire process will work. There are many opportunities for questions to arise that will need to be addressed by this committee. With that in mind, we hope this will be just one more step in a continuing process.

One of our biggest concerns is the inconsistency we see from county to county in the actions, level of competency and knowledge of the FmHA County Supervisor. It does not appear that the County Supervisors have read the FmHA final regulations. We feel this is a situation that can be corrected with training. Our suggestion is for improved quality of training and a policy of continued training.

It is critical that all farmers across the State be given consistent and accurate information in order for our State funded Farm Counseling Program as well as private advocacy programs to work. We are all working from the same law. We feel the law, for the most part, is a fair and just solution to this severe farm loan delinquency problem. We must, however, all be playing by the same rules and speaking the same language for all eligible borrowers to receive fair and equitable treatment under the law. Misinformation can result in great hardships to farmers. One farmer was told he could purchase his farm at the Net Recovery Buyout figure, even if he did not respond to the packet with the 45-day deadline. The farmer did not understand this to be the case and checked further with the State office. The FmHA State office said this was not possible. The farmer was concerned that he was being deliberately misled in order to cause him harm and to discredit him with another lender.

There is a big question as to just what can be appealed. Many times borrowers have been told that everything is appealable. When the farmer is offered a restructured debt on 1951-S, exhibit F, there is no provision for an appeal. This is a very critical offer. Due to the complexity of the process and the opportunity for error, we feel it is critical that this offer be appealable and thus open for further negotiation.

We feel an additional concern of the restructured debt offer being the last word is the source of the data that was used to arrive at this final offer. We have found many instances of the County Supervisor changing the figures on the Farm and Home Plan and then entering these changed figures into the DALR$ program without the knowledge or consent of the borrower. Without question what goes into the DALR$ program determines what comes out. We now have farmers receiving DALR$ printouts with figures that the farmer does not have any idea where they came from. This is very serious. The objective of this process is to come up with a feasible plan at least cost to the Government in order to keep the farmer on the farm. When County Supervisors use arbitrary figures that may or may not be realistic in the farmer's operation, the chances of a feasible plan that is also realistic is greatly reduced. We are not advocating these Farm and Home Plans be carved in stone. We agree that there is need for flexibility on the part of loan officers in dealing with loan applications. The Farm and Home Plan is not a loan application but a financial picture of the farming operation. The County Supervisor may have some very valid concerns with numbers on the Farm and Home Plan. However, this should always be done with the full knowledge and consent of the borrower. It is vital to the success of the farmer that he be fully aware of what is contained in the plan of operation under restructured debt. He is going to be living and operating on this plan, in many cases, for a number of years. It must be truly feasible and realistic in his eyes in order to have a reasonable chance to successfully implement the plan. We have brought this to the attention of Senator Lugar. We have attached a copy of a letter Senator Lugar sent to Mr. Vautour of FmHA. We are hopeful this will be corrected. Our concern is that the law is being too loosely implemented.

We are beginning to hear from a few farmers who have been offered Net Recovery Buyout and have been able to secure financing at that figure. However, the problem has come up with releasing of the liens on the collateral. Farmers are being told that it will take 6 weeks to 6 months for these liens to be released. When this occurs it effectively kills the refinancing deal. The new lender will not make the loan without the security. We suggest a very basic loan closing arrangement. Real estate sales people do this on a regular basis with a minimum of training. All of the paperwork required for both sides is prepared ahead of time. At a given date and time the farmers and new lender exchange the agreed upon amount for the proper release of security. This is a simple, efficient and equitable manner of conducting business.

The appraisal figure is critical to the debt restructuring plan. The appraisal must be as accurate and equitable as is humanly possible. A figure that is too low may unnecessarily increase the loss to the Government and give an unfair advantage to an individual farmer. We have not seen this as yet. An appraisal figure that is too high can cause an undo hardship on the farmer by inhibiting the chance for successful reorganization. The farmer may be put out of business only to find out later that the appraisal figures turned out to be wrong. In effect the Government has suffered additional loss and a farmer has been lost from the land in error. We feel that appraisals across the board have been too high. The 6 percent appreciation per year that is being used in Indiana is an inflated, unrealistic and unfair assumption. Many of these farms are actually depreciating in value due to the distressed financial situation of these farmers. We also feel the County Supervisor should not be associated with the appraisals of the collateral, as this could result in a conflict of interest. With all the information from the farmer at hand and the ability to set the appraisal value, the County Supervisor has the power of survival or collapse over the farmer.

One County Supervisor told us that he is not personally liable if he makes a mistake on a loan application or the debt restructuring forms. He is personally liable only if he writes a contract for work to be done on inventory property, such as repairing a barn roof, etc. We feel there should be equal liability in all areas. The opportunity for error and misconduct is equally present in all situations.

In Indiana the FmHA County Supervisor, upon receiving a written application for services, sends the applicant a form letter. We have seen these letters on numerous occasions. The letter is as follows:

> DEAR MR. AND MRS. FARMER: The Farmers Home Administration (FmHA) has authority under the Consolidated Farm and Rural Development Act to make limited resource farm ownership and operating loans to qualified applicants and FmHA borrowers.
>
> The program provides credit at reduced interest rates to low-income farmers and ranchers whose farm operations and resources are so limited they cannot afford the regular interest rates for FmHA loans. The program is also intended to give beginning farmers and others a chance to receive the capital necessary to start a successful farming operation.
>
> Borrowers with existing farm ownership and operating loans who qualify as limited resource operators may have their loans reamortized or rescheduled at the limited resource interest rate.
>
> If you would like additional information regarding the limited resource loan program and how to apply you should contact this office.
>
> I will be more than happy to discuss the program in detail with you.
>
> Signed, County Supervisor.

We feel this letter is misleading and gives false hope and encouragement. The farmer assumes that the County Supervisor is aware of his (the farmers) situation after having just received the written application with all of his financial information. The individual farmer is not aware that this is a form letter. The farmer is not aware that this is just a formality that does not necessarily apply to him, even though the letter is specifically addressed to him. The farmer assumes, and we believe rightfully so, that he would not be getting this response if he was not in some way eligible for the loan and lower rates. We want to encourage that information go out to the individual borrowers. We believe, however, that care needs to be taken to ensure the communications are not misleading.

In Indiana we are seeing a large number of FmHA requested mediations. On the surface this is good. However, because this is a new program and a relatively new concept in debt resolution, farmers are not fully aware of the potential for success of a mediation session. In Indiana, the forms and information should come from the State mediation program. Farmers are also being given the forms by FmHA that are used in States where no mediation program exists. We feel this is confusing. We would like to see more effort and information go out to the borrower as to how a mediation session could be very helpful to the borrower and all creditors involved.

We question whether FmHA is mediating in good faith or simply going through the motions. FmHA has told the State mediation program that they must go through mediation before they can foreclose. Therefore, they are routinely sending everyone to mediation. When FmHA is the only creditor there is no need to request a State mediation session. This is an unnecessary added cost to the farmer and to FmHA. Without proper information and preparation on the part of the farmer and without honorable intentions on the part of FmHA, a very good and positive program becomes a scam.

We have not seen any mediation sessions completed as yet. We do see a potential problem with timing. There is no timeframe set for the completion of the action agreed upon with FmHA in a mediation session. Nor is there a procedure established with a timeframe as to what should happen if the mediation session does not result in an agreed upon solution with FmHA.

At the beginning of the debt restructuring process, farmers were led to believe that net recovery buyouts could be financed through other lenders with guaranteed loans.In March of 1989 the County Supervisors were told flatly no. We would like to know who made this change. Is this a State or Federal directive? We have tried to find out through the Freedom of Information requests, but our requests have gone unanswered and unsatisfied for 6 weeks.

We are finding that FmHA County Committees are not informed of the contents of the new FmHA regulations. Many farmers have applied for an operating loan at the same time they applied for debt restructuring. The operating loan application must go before the County Committee to determine eligibility. In many cases the eligibility is denied because the borrower is delinquent. The County Committee is not aware of the debt restructuring provisions based on the least cost alternative. They are taking the attitude of not making an additional loan when a previous loan is delinquent. We need a massive training effort for County Committee members. This situation is also causing a hardship on the borrower who has just become delinquent as of January 1, 1989, in large part due to the drought of 1988.

An additional problem with County Committees and lack of information and training is with borrowers who have left farming and still owe FmHA a sometimes large, unsecured debt. Farmers stopped farming, sold their assets and moved from the farm at the advice of FmHA. All of the proceeds from this action were turned over to FmHA. The farmer was verbally assured that the remainder of the debt would be charged off. The farmer interpreted this to mean written off. Now the farmer finds sometimes as much as 9 years later, this debt still exists and he must deal with it. Many times the farmer has been able to get a job and put his life back together. But he must apply to the County Committee to settle this debt. In so many cases, the County Committee seems to be after blood. A farmer who has left farming with nothing and yet left a debt unpaid is being treated like a menace to society. They want to strip him of every thing he has managed to accumulate. We do not feel this is the spirit and intent of Congress. These people are being forced to file bankruptcy to address these situations. In most of these cases, FmHA has no collateral and thus, no security. In a bankruptcy they would get little or nothing. There is no reason to force this action. Also, we feel the County Committee should not be able to override an agreement the farmer had with a County Supervisor as to how the remainder of the debt would be handled. Farmers were not told the County Supervisor had no authority over what is to be done with the remainder of their debt.

Farmers must also deal with the County Committee to be able to retain their homestead. The farmers must be able to debt settle the remainder of their debt and still be able to make mortgage payments on the homestead. With the County Committee's shark-like attitude, the homestead purchase becomes impossible.

Respectfully submitted,

SUSAN BRIGHT,
Farm Program Coordinator.

[Attached letter of Senator Lugar to Mr. Roland Vautour, Under Secretary for Small Community and Rural Development, follows:]

U.S. SENATE,
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Washington, DC, April 25, 1989.

The Honorable ROLAND VAUTOUR,
Under Secretary for Small Community and Rural Development, U.S. Department of Agriculture, Washington, DC.

DEAR ROLAND: I have been contacted by several persons in Indiana regarding the Farmers Home Administration's efforts to provide primary loan servicing to delinquent borrowers. I wanted to share a few of these concerns with you with regard to the administration of this program.

One of the forms required to be completed by the delinquent borrowers in order to apply for primary loan servicing is the Farm and Home Plan. The information provided on this form is used to calculate the critical "balance available" figure which determines the merits of restructuring.

I am told that County Supervisors are arbitrarily changing the data on the Farm and Home Plan without consulting the farmer. While the County Supervisors must have some flexibility to modify erroneous data, there have been instances of inaccurate changes that ultimately impact the "balance available" calculation. Given the enormity of the data requirements of the plan, in most instances the farmer is not even aware of the changes, which, if inaccurate, might prompt him to appeal the decision.

It would seem prudent to encourage, if not require, your County Supervisors to discuss significant changes to the Farm and Home Plan prior to entering this data into the DALR$ program. While some of these changes may be insignificant, others may dramatically impact upon the bottom line. It would be in the best interest of the farmer and the County Supervisor to have the most accurate possible data entered into the plan and this can only be done through open communications, not arbitrary judgments by one side.

I hope you will consider these points carefully, and convey these concerns to your State and local offices.

Sincerely,

RICHARD G. LUGAR,
Ranking Minority Member.

PREPARED STATEMENT OF CHRIS FOSTER, FARMER AND FARM ADVOCATE

INDIANA RURAL ORGANIZING PROJECT—INDIANAPOLIS, IN

I would like to thank all members of this subcommittee for allowing me the opportunity to share my experiences. As a family farmer, and farm advocate with experience in both the States of Illinois and Indiana, I have direct experience and knowledge of what has been happening with respect to FmHA treatment of farmers attempting to restructure under the 1987 Credit Reform Act.

FmHA was created to lend stability to a business which is by nature inherently risky in order to ensure food security. For many years, FmHA has fulfilled this role. In the 1980's however, philosophy changed and FmHA policies proved diametrically opposite to the original intent. In my own case FmHA disregarded its programs and reversed their decision to work with the local bank in reorganizing our operation in the early 1980's when our secure financial position became insecure mainly resulting from falling land values. Had we been treated fairly under the guidelines then in place, I believe our operation could have been salvaged, given both our production records and proven management ability.

Our story is documented from the testimony of our 1985 appeals hearing. Our witnesses, including our local banker who stated that the County Supervisor had told him our loan would be approved, our county extension supervisor, and our Farm Business Farm Record fieldman from the University of Illinois, who testified with supporting evidence the production capability of our operation. They were disregarded by FmHA district director who served as the hearing officer, and who we believe was involved in the decision to reverse our loan request.

Including the details of my story in this testimony seems to be irrelevant as such abuses were to have been nullified with congressional passage of the 1987 act reaffirming FmHA's purpose. In some respects FmHA has implemented procedures to correct some of their abuses. This, however, has come about because of pressure and continued monitoring of FmHA activities by farmers, advocates, Farmers' Legal Action Group, and congressional oversight. In other respects there has been little change in the attitude and practices of FmHA officials. Recent developments in my case bear witness to this fact.

In our own case, the result has been that although we tried to reorganize under a chapter 11, the drought last summer dealt our operation the final blow. We find ourselves having to liquidate our farming operation under chapter 7. The only debt we have with FmHA is secured with machinery which we have cared for and kept in a barn for possession by FmHA. Yesterday a letter arrived from our former County Supervisor. I am including a copy with this testimony to show what I believe is FmHA's continued disregard for farmers. I believe that the last sentence sums up this attitude. It reads as follows: "We (FmHA) cannot promise you (attorney) or your client (Ed and Christine Foster) that a request (for loan servicing options) will be fully and fairly considered." Signed, "Sincerely, James M. Chisler." (FmHA supervisor, Franklin County, Illinois.)

Over the past decade FmHA has been guilty of decisions which have resulted in the termination of hundreds of thousands of family farms. On several occasions, angry farmers went to court asking that FmHA's illegal and unfair practices be halted. Efforts were rewarded, when Federal judges temporarily ended FmHA activity with injunctions until proper methods of debt restructuring could [be] legislated. The passage of the 1987 Agricultural Credit Reform Act was hailed as [a] vehicle for this to happen.

Farmers and Farm advocates worked with the legislative process suggesting procedures for debt restructuring and reviewing and commenting on regulations which would implement the law. At every stage we met with resistance and defiance from both FmHA and the Farm Credit System. Such questionable treatment serves to foster a skepticism as to the goal of these agencies.

Farming requires precise timing both for crop and livestock production. It is a continous process that can withstand ups and down from natural disasters as well as price fluctuations which occur for short periods of time. In order for a farmer to stabilize his equity, however, he must be able to use credit resources which are flexible and responsive to the risk factors involved. It is a simple matter to alter the viability of an operation by simply inhibiting a farmers ability to finance his production inputs in a timely manner. FmHA has been guilty of delaying action which would have helped farmers continue over this turbulent economic period, and it is continuing to do so.

FmHA has used many excuses to cover their inadequate management of lending resources including the placement of blame on farmers for "getting the 1987 Ag Credit Act passed." They are currently using the number of restructuring proposals received, as an excuse not to make spring planting money available. They are also blaming this mass of restructuring proposals for their doing an inadequate analysis of the plans submitted when it was FmHA who imposed these deadlines. They have used the process of mediation, which should be the key to making a restructuring plan workable, as an excuse to slow down their loan decisions.

There are cases where farmers have spoken out and have received better treatment, but only after extraordinary intervention by Members of Congress on an individual level. One case example is that of an Illinois farmer with a U-Pick Berry business. This farmer was under a plan to leaseback and eventually buy back his farm. Without warning or explanation, FmHA dropped his lease agreement this spring just prior to planting. FmHA attempted to sell the property before the farmer had even exhausted his right to appeal this decision. It was only after months of work with an Illinois farm advocate and intervention by sympathetic Members of Congress that FmHA was forced to be accountable to the law. How many other cases when unchallenged and farm families were forced off their land?

Farmers have been "starved off their farms" when FmHA has refused to work with them not only to restructure debt, but to make funds available to them through the continuation loan policy which can be used during the restructuring negotiations. This has prevented farmers from getting out their spring crops, and has forced the liquidation of livestock herds because short term credit needs are being deliberately held up by FmHA. This makes no sense and it is not cost effective. FmHA has a responsibility to see that farmers take advantage of this option.

FmHA has been very slow in implementing the law in other ways as well. Training for County Committee members has been inadequate. Failure to inform committee members of their ability to qualify delinquent farmers in the process of restructuring, for continuation production loans is an example of this.

There is a clear procedure outlined for the conducting of FmHA County Committee elections. There have been several reports of irregularities in the recent elections which must be corrected.

County Committee members must also be instructed on how to deal with the consequences faced by farmers who followed FmHA advice and voluntarily liquidated their operations over the past 10 years and never were formally debt settled. These farmers should not owe a deficiency after having turned over all their means of production to FmHA as requested.

Another issue which must be addressed is FmHA's practice of manipulating a farmer's cash-flow projections so that a plan will be analyzed as unfeasible. When a farmer applies for restructuring, FmHA requires that he supply a Farm and Home Plan with a 5-year projection of both income and expense. This information is run through a program called DALR$. The final decision as to the feasibility of continuing this operation is made from the DALR$ analysis. Both the process of using the DALR$ analysis as the final decisionmaking tool and using a 5-year projection are flawed. Farmers to date have not been provided access to either a DOS based personal computer program containing the DALR$ program nor has there been the development and distribution of a handbook of calculations for plan development.

The projection is calculated with yield and price data required by FmHA which show a 5 year increase in the cost of production inputs and a decline in farm prices. FmHA has no more ability to predict such trends than do farmers. The plan also requires the use of the past 5 year price and production history developed during a period of economic decline and major drought conditions. This suggests a lack of commitment on the part of FmHA to help find ways to keep a farmer in business. In addition, farmers are not usually present while information is fed into the computer and the resulting analysis does not show what figures were actually fed in. There is no cross check for accuracy.

There are other problems with the data required for a plan's analysis. The fact that unsecured debt has to be figured as due and payable the first year will probably prohibit most plans from cash-flowing. This unsecured debt should be considered "uncollectable." This is how it is treated under bankruptcy reorganization and makes sense given that the Ag Credit Act of 1987 was designed to enable farmers to restructure without the expense of bankruptcy.

Many of the reports I have heard about indicate that farmer data has been changed by FmHA supervisors without the knowledge or consent of farmers. This is unconscionable as when changes are warranted they should be discussed and negotiated.

Many farmers in both States have reported problems with FmHA appraisals. Often, these have been higher than comparable land sales in the area justify. In other cases farmers have been asked to do their restructuring plans without being given the most current FmHA appraisal. There is no procedure presently being used to appeal unfair appraisals. An equitable appraisal process must be followed.

The key to making restructuring feasible is mediation. This fact was recognized by Congress when mediation was included in the 1987 act. Existing evidence indicates that mediation reduces the fiscal and human costs of debt resolution for both borrowers and lenders. It is a vital tool for ensuring that least-cost solutions are reached. It should provide protection of a farmer's rights during proceedings against him and it also affords the opportunity for lenders to plan with borrowers for repayment of debt and the regeneration of investment assets over the long term. This only happens, however, when mediation is done in "good faith" and with independent, impartial, and well-trained mediators who understand both the farming and lending business.

Mediation in many States is not working because of FmHA's refusal to work toward proper implementation of a strong mediation program. In States where there are established mediation programs, often FmHA refuses to mediate FmHA debt at the creditor's meeting. They want all other creditors to mediate debt and then deal separately with a farmer. This attitude is proving harmful to the development of a feasible plan.

In many cases where there are inadequate programs or mediation programs do not exist, FmHA is calling the meeting with creditors immediately following a farmers rejection for restructuring, the required mediation session. This is not where mediation in "good faith" takes place. The primary goal of the session should be not to decide how to liquidate the operation, but how the operation can be salvaged.

FmHA attempts to control mediation, and their holding "token" mediation sessions because it is a required step in the foreclosure process is not in keeping with the intent of the 1987 Ag Credit Act, and must be revised. Congress must send a powerful message to FmHA by authorizing Federal matching funds for the continuation and development of strong State mediation programs.

FmHA has developed a process for farmers to appeal some adverse decisions. Concern is justified as to the effectiveness of this process given the facts that Congressmen have had to be called on to bring the necessary pressure to bear on FmHA to correct abuses. There have also been troublesome reports of appeals which "overturned" decisions favoring of the farmer being reversed back by the regional supervisor without a rehearing of the farmer's case. The appeals process has also been used to delay FmHA relief to a farm business and thereby worsen its chance of feasibility.

The way in which the DALR$ program has been developed has resulted in a tremendous number Net Recovery Buyout options. This is an attempt of FmHA to get out of the farm loan business, which runs counter to the reason for their existence. FmHA needs to remain a source of credit for beginning, reentry, and troubled farmers. When farmers are offered the option of taking a Net Recovery Buyout, they should be allowed to have guaranteed loan funds available to do so. Farmers were led to believe that this would be the case, and later in March 1989, were told that this would not be an option. This policy must be reversed. The large number of Net Recovery Buyouts also raises concern over the the deed restrictions being placed on property in FmHA inventory. The more buyouts there are the more land is conveyed, and the result will be that once profitable farming units will be cut up into less feasible units, and will be worth less on the market. Neither result is a "least cost alternative" as required by the law.

I also would raise a question as to why agencies which have been dealing with farmer and conservation matters in the past, and with whom farmers have to deal with for other considerations of their plans are not the agencies to work with the deed restrictions on the land in FmHA inventory. It would seem to me to make far more sense for ASCS and SCS to be assigned to this task.

Farmers who are restructuring under outside of bankruptcy are faced with a very difficult situation as to their tax liabilities. There is a need to correct this point both by addressing the tax liability for those who receive debt write-down and for those who enter into shared appreciation mortgages. Rulings on these issues are critical before a farmer can adequately assess the feasibility of his restructuring plan. New tax legislation being introduced by Senator Conrad and others needs to be supported as well.

The last issue I will raise is the relationship between FmHA's refusal to work with farmers and the increasing level of activity of extremist radical right groups in rural communities. The decline of the family farm system has in many cases nearly destroyed many towns in rural America. The symbiotic relationship between farmers and their communities have formed the keystone of democratic government. A sound community with all its checks and balancing diversity is fertile ground for the growth of sound democratic principles. A fragmented community [in] a faltering economic substructure is fertile ground for the growth of extremist thought and activities. FmHA is the recognized farm agency for this country. When FmHA is unresponsive to the needs of rural communities, and is guilty of circumventing its own rules, then FmHA is responsible for the growth of such extremism.

We have had several incidents of extremist activities in both Illinois and Indiana. Desperate farmers have been bilked by fast talking conartists who have sold not only "hate propaganda" but also bogus legal solutions for farm debt resolution. There have been two dramatic examples of such activities with both the *Leffleman* case in northern Illinois, and the *Schneeman* case in southern Illinois. Rural communities in the west central part of the State are hammered with the weekly preaching of Christian Identity minister Pete Peters every Sunday morning and farmers all over the State have become involved with "common title bond and trust" schemes. The latest reports show a new financial scheme called "New Horizons" spreading. It encourages farmer[s] to give upfront money for opening a line of credit from "offshore investors" for up to 10 times the amount they spend.

One of the saddest examples of such extremist activity can be witnessed in the television broadcasts of Jim Jones' "Feed the Children" program. One show taped for Veteran's Day 1987, contrasted farmers who were veterans being forced off their farms, with victimized Japanese Americans who were receiving reparations for oppression during World War II. The continual question being posed was: "Doesn't this make you mad! Your government is giving 'Japs' benefits and won't raise a hand to help veterans who farm." All this was liberally interspersed with flags, patriotic music, and lots of appeals for money "to feed the children." As in all such hate mongering, there are issues which need to be addressed, and which do contain grains of truth, but the underlying message of this program was one of justifying racial hatred. LaRouche has been gaining support in rural communities. Much of what he points out as wrong with the treatment of farmers and rural people is a thoughtful analysis. People are easily hooked into the rest of what he is saying because he says what we know to be true in his introduction. Often it is a simple matter to lead his audience into his real agenda.

Farmers, for the most part are intelligent, fair minded, practical people. But at this time, many have lost everything they have depended upon for their way of life. Many more are teetering on the brink of financial collapse. When farmers are callously written off by FmHA, and continue to watch FmHA's attempts to oppose restructuring agreements, they are easy prey for radical and extremist groups. FmHA, with its disregard for the needs of farmers, is plowing fertile ground for the sowing of the seeds of hate.

Family farmers have earned their place as the backbone of rural America. They have provided cheap and abundant food and fiber products since Colonial days. Farming however, is a risky business, and Congress aware of the importance of ensuring food security established FmHA in order to keep the family farm system productive. FmHA programs have been developed to provide the necessary financial tools for farmer use in riding out difficult times which are the result of circumstances beyond the management control of family farmers. FmHA has been charged with the duty of working to preserve farm business when it is in the best interest of the American taxpayers. Instead of doing this, FmHA has used its power and authority to continue the dismemberment of the family farm system. It is imperative that FmHA be monitored and given further instruction as to their responsibility under the law. In addition, there should be consideration given for the establishment of a system which allows legal challenges against FmHA when they have not fulfilled their legal obligation.

Thank you, once again for giving me the opportunity to present my views. I look forward to continued good work by this subcommittee.

[The letter from James M. Chisler, County Supervisor, follows:]

U.S. Department of Agriculture,
Farmers Home Administration,
Benton, IL, May 1, 1989.

Mr. Rick Hobler,
Attorney-at-Law, Mt. Carmel, IL.

Dear Mr. Hobler: We were recently notified that your client, Edward S. Foster, Jr. and Christine M. Foster, have filed bankruptcy. The enclosed forms explain some of the loan servicing options that FmHA has available.[1] We would appreciate you informing your client of these options. In order to ascertain whether your client is eligible for these options, it is necessary for FmHA's employees to work closely with your client. We are concerned about whether such contact will be in violation of the automatic stay.

If your client has filed under chapter 7 and wants to apply for servicing relief from FmHA, the case must be dismissed or the automatic stay must be modified for the limited purpose of permitting your client to apply for servicing relief. If your local jurisdiction does not sign orders providing limited relief from the automatic stay, please provide FmHA with a filed copy of your motion seeking limited relief from the automatic stay. A sample motion and order are available from the U.S. Attorney's Office. After dismissal or modification of the automatic stay, or attempted modification, your client must complete and return attachment 2 of exhibit A of subpart S of part 1951 of this chapter to enable FmHA to consider or grant any request for servicing. So long as the chapter 7 is pending, FmHA will not discuss any of the servicing options with you or your client unless the automatic stay is modified or you seek a modification and it is not customary for your local bankruptcy court to approve such orders. Also, in order for FmHA to continue with your client after a discharge, your client must reaffirm the FmHA debt.

If you intend to file a motion to allow your client to request and be granted servicing relief, we ask that you do so within 45 days. If no motion is filed within that time, we will assume that your client does not intend to make a request for servicing, and we will proceed to protect our interests, as allowed by the Bankruptcy Code.

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[1] Enclosed forms do not appear in the printed hearing record.

FmHA's farmer programs debt servicing regulation is found at 7 CFR part 1951, subpart S. We cannot promise you or your client that a request will be fully and fairly considered by FmHA.

Sincerely,

JAMES M. CHISLER,
County Supervisor.

PREPARED STATEMENT OF JEAN WYONT, UNITED FARMERS ORGANIZATION, WESTERN CAROLINA FARM CRISIS CENTER, LAWNDALE, NC

[Letter]

The Honorable Senator CONRAD,
U.S. Senate, Washington, DC.

DEAR SIR: Thank you for giving me this chance to discuss with you the manner in which our farmers are being handled. I work with farmers from a 14 county area in North Carolina. I also work with farmers from across North and South Carolina who need additional help with paperwork.

There are counties in my area that have worked well with the restructuring process. However many will run the DALR$ program only once. This is one area that I would like to talk to you about. One good example that I have is Cleveland County (NC). Recently while meeting with the Assistant County Supervisor, he made the direct comment that all of the farmers in this county would be treated alike—just like we were "a son of a bitch." There were originally seven packets mailed from this county. One was not responded to. One farmer voluntarily liquidated. The remaining five were all rejected. One of these five farmers came by here the day he turned in his packet with a hand written note advising him to scale back his operation and look for nonfarm income. How could any Supervisor know that his operation would not be restructured before working with the DALR$ program?

Cleveland County uses the historical average as a Golden Rule. There are no changes allowed in the operation. One of the farmers who was rejected went into the Dairy Termination Program. He is now row crop with a few beef. His Farm and Home Plan was reworked using his historical average for his dairy. However it is interesting to note that the 1986 cattle sales and payments received in 1987 and 1988 were not calculated in the ratio of feasibility. FmHA prices were used even though 1989 contract prices were documented. I am attaching the work furnished by the Assistant County Supervisor (attachments 1 and 2).

I realize that our FmHA offices have to have a tool available that will enable them to draw a picture of our farm management. It is a valuable tool for calculating farm production and yields. But here again if you are an apple grower and 3 of the last 5 years were freeze years and your trees are bent to the ground with fruit and if you have been developing a new orchard for the past 5 years how do you get that production into the new cash-flow? Attachment 3 shows a weather history and yet when his paperwork was amended by the Assistant County Supervisor production averages were inserted rather than a county or State average for production expected.

It is really hard for me to understand how FmHA could advise a farmer that he believes a "satisfactory plan could be developed to justify reamortization and rescheduling" and point out how it could possibly be done and yet deny a farmer the right to try to run another DALR$ program without going through the appeals process (attachment 4).

If you contact our State office there seems to be some concern that our farmers are not asking for a meeting of creditors. When FmHA advises a farmer he is told "this acknowledgement will be your written request and consent to FmHA releasing information concerning your account to other creditors who participate in the meeting." Have you any idea what the reaction of the farmer is who is still able to get operating money at his small town bank or a PCA or with his feed company? We are not dishonest with the other lenders but rather our first thoughts are why and what information will be given to them and will the lender work another year with me? If you look at the attached information perhaps you can understand how inadequate some of our County Supervisors can make a farmer feel.

Of major concern is the Continuation Policy. Congress passed this policy to keep our farmers on the land. And yet any farmer that has requested this servicing during the time of restructuring has been denied for the following three reasons:

1. There is no funding available.

2. We will not consider operating money until the DALR$ is complete.

3. FmHA will make a guaranteed loan. Many times FmHA will continue to have this farmer meeting with lenders even when FmHA has been advised by the other lender that he is unable to obtain financial aid.

Another problem that occurs when asking for restructuring or leaseback/buyback is FmHA AN 1857 (1924) (atachment 6).If creditors other than FmHA are involved in outstanding debt, FmHA can use a process called Deferral. However of the 30 Farm and Home Plans that this office has attempted not one will work. Here is why. If a row crop farmer has an annual income in 1988 (gross) of $100,000 FmHA projections for the year following a five deferral (1994 if restructured in 1989) will have a gross income of $83,200 based on FmHA projections. If this farm is working at a rate of 72 percent income to expenses, his 1988 expenses will be $72,000. The 1994 Farm and Home Plan expenses will increase 19.2 percent to $85,424. Therefore there is nothing left for family living, debt service, or capital expenditures. There are two things that are quite interesting about these projections. First, contract farm income increases, and secondly, it is interesting to note that if these projections are accurate that a farm that is totally debt free in 1988 will not be able to cash-flow by the year 1994.

Another area that is a major problem to our farmers here is the Farm Credit System interest rate. I work with many farmers within the FCS system who are considered "Distressed Borrowers" which may only mean that he is a high risk borrower. It is somewhat interesting that many of these borrowers are highly secured. All the same, each one has watched his interest rates rise from 11.75 percent to 15 percent in the last few months. Can you imagine what this rate will do to an already tight cash-flow? FCS will also make farmers give up rights in order to obtain restructuring. One of the farmers that I was recently working with gave me a copy of a letter that was a result of trying to work out a problem in which FmHA would release no money for debt service. The borrower finally was able to get FmHA release for a monthly interest payment of $1,800. But in order to keep FCS from foreclosing the borrower had to agree that if they could not sell the agreed upon acreage that they would take no action to hinder FCS foreclosure. Why should any farmer be forced to make such an agreement? (Attachment 7.)

I hope and pray that each of you will consider these problem areas and try to see and understand how our joy has changed to frustration and frustration has changed to desperation and tomorrow is not the dawn of a new era but rather the sunset of our years without the life we labored so long for and without the dreams of yesterday.

Respectfully,

JEAN WYONT,
W. Carolina Farm Crisis Center,
United Farmers Organization.

[Attachments 1-7 follow:]

Attachment 1

NC Instruction 1924-B
Exhibit A

Borrower's Financial and Production History Worksheet

Name: George G. Greene * 1986 capitalized cattle sales not included. Dairy buy-out pmts
Date: March 9, 1989 not included.

		1	2	3	4	5	6	
		Year	Year	Year	Year	Year	5-Year Average	Plan Year
		1984	1985	1986	1987	1988		
1	Income	138146	144602	73773 19	59525	92341	106772	
2	Expense *	117819	115236	99160	39733	66329	87655	
3	E/I-%	75	80	126	67	71	82	
4	Net Income							
5								
6	Labor	13176	15063	10178 50	44		7814 20	
7	Mach. Repair	10833 20	7769 19	11456 75	2748 89	3267	8835	
8	Bldg/Fence Repair	1133 43	2553 25	1666 70	1354 20	7410 57	2465 03	
9	Rent	5992	5992	5992	5992	5992	5992	
10	Feed	21527 61	9513 25	1226 56	5622 66		6566 06	
11	Seed	7945 31	11892 61	12454 54	7492 91	11405 16	10239 31	
12	Fertilizer	23327 99	31035 07	11727 70	9660 12	9992 45	18372 67	
13	Chemicals							
14	Other Supplies	883 53	889 21	843 46	156 04	326 62	639 89	
15	Lvstk. Expense	2498 94	3325 91	1251 26	3 40		1416 90	
16	Machine Hire	4478 63	4768 41	2733 07	75 00	1998 67	2909 57	
17	Fuel & Oil	3252 62	2325 22	6992 01	4567 54	5723 28	6772 14	
18	Taxes & ins.	3269 48	3712 03	3505 16	3742 77	4152 77	3676 44	
19	~~Insurance~~							
20	Auto/Trk. Expense	2474 32	7650 75	5019 73	743 51	1952 07	2248 48	
21	Utilities	3367 91	4154 62	2733 [illegible]	1878 18	1353 58	2294 91	
22	Other							
23	office	166 18	195 66	92 45	70 95	100	124 13	
24	dues	6390 54	7037 53	7152 88	134 05	266 97	4306 27	
25	Unpaid Opt. Bills					11903		
26–28	Enterprises:	No. Head Or Acre / Per Head Or Acre Yield	No. Head Or Acre / Per Head Or Acre Yield	No. Head Or Acre / Per Head Or Acre Yield	No. Head Or Acre / Per Head Or Acre Yield	No. Head Or Acre / Per Head Or Acre Yield	No. Head Or Acre / Per Head Or Acre Yield	No. Head Or Acre / Per Head Or Acre Yield
29								
30								
31								
32								
33								
34								
35								
36								
37								
38								
39								
40	*Total of items 6 - 25							

(12-09-88) PN 44

Attachment 2

Attachment ~~2~~

	1987	1986 drought	1985	1984	1983 drought	Avg.	(draw) N.C. Fut 1986 Mkt price	
Wheat	36	[illegible]	35	47	31	~~34.4~~ 34	4.70	3.0
Oats	62	34	53	69	~~69~~	~~55.4~~ 56	200	1.9
Barley	60	30	42	69	58	~~51.8~~ 52	220	1.8
Alfalfa [illegible]	1.7	1.5	1.7	1.7	1.5	~~1.62~~ 1.6	125T	90.
Corn for grain	44	34	68	86	35	~~54.4~~ 54	320	2.[illegible]
Soybeans	19	21	21	14	15	19	650	7.[illegible]

Snapbeans N.C. Just 1986 to [illegible] A normal year production 31 CWT/A. 20.

– – –

	1984	1985	1986 no cattle sales ~~70000~~ *	1987 11,733 *	1988 11733 *	cumulative 5 mon
All farm income excluding dairy buyout payments	15[illegible],146	144,602	130,931	59,525	92,[illegible]41	526,04[illegible]
All farm cash expenses excluding interest	11[illegible],254	119,244	105,107	40,730	59,056	445,34[illegible]
E ÷ I	.75	.[illegible]	.8[illegible]	.68	.64	.76
			.53	.57	.56	

Projected income from crop sales 100,136

($100,136 x .76) - 6027 69,676 cash exp excl [illegible]

2-25-89 Hwp

* years following buyout & excluding dairy payment .68 & .64
.76 used historical average to 1989 income

This farmer is actually working at the rate of .56 income

1 Acre = 7?? (42 lbs) - , in attachment 2

ASCS-566 bushels

Attachment 3

NC Instruction 1945-D
Exhibit A

J. R. Hope's avg yield = 18,?0

NORMAL PRODUCTION OF CROPS IN NORTH CAROLINA NOT INCLUDED IN AGRICULTURAL STATISTICS

YIELD PER ACRE*

	UNIT	1984	1985**	1986**	1987**	1988
Hope's actual →		23,820	2,989	2,087	31,930	19,018
Apples	Lbs	23,800	14,800	8,100	32,500	28,700
Peaches	Lbs	10,800	500	6,279	7,140	10,600

** = disaster in Cleveland Co.

*Yield per acre obtained by dividing total acreage in State by total production. Production and acreage are from Agricultural Statistics.

→ not necessarily county average but rather production

County	Disaster Number	Type Disaster	Incidence Period
All	S-057 M-699 V 115	Excess heavy rainfall, high winds, high temps, severe storms and tornadoes	3-1-85 through [illegible]
Cleveland	S-176	Freezing temps	1-1 through 5-2, 1985
Cleveland	S-178	Freezing temps affecting fruit crops	1-1 through 4-30-1985
Cleveland	S-230	Drought — [illegible] freeze [illegible] [illegible]	1-1 through 10-1-1986 3-1 thru 5-15-86 5-1 thru 7-15-86
Cleveland	S-232	Severe drought [illegible] temp	1-1-86 thru 10-1-86
Cleveland	S-316		1-1 through 8-31-87

Processed Cabbage	Ton	3.4/Acre
Collards and Kale	Bu (25 Lbs)	60/Acre
Field Peas	Bu	200/Acre

Attachment 4

United States
Department of
Agriculture

Farmers
Home
Administration

P. O. Box 192
Shelby, NC
28150

April 21, 1989

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. George G. Greene
Mrs. Nancy E. Greene
Route 2, Box 232
Shelby, North Carolina 28150

Dear Mr. and Mrs. Greene:

Regarding our letter of March 2, 1989, you did not request mediation or a meeting with creditors, so we have not scheduled such a meeting.

no meeting was set up to disc with FLB

After careful consideration we were unable to take favorable action on your request for FmHA services. The specific reasons for our decision are:

(1) A Softwood Timber (ST) loan cannot be approved because there is a prior lien on the land that would be security for the ST loan. Also, you have not furnished (A) a satisfactory Softwood Timber Management Plan, and (B) evidence that the Soil Conservation Service has determined that the proposed ST land is suitable and marginal land" as defined in FmHA Instruction 1951-S, Exhibit G, section I(B)(2).

I would not expect the Softwood Timber Management Plan and SCS determinations to be problems, but the prior lien is definitely a problem.

You have asked about deferral of FmHA loan payments for five years, during which time you will pay off Federal Land Bank and then obtain a ST loan. FmHA regulations do not allow this. If a ST loan can be approved, it should be closed within six months, usually sooner, and the pines should be established during the 1989-90 dormant season.

I believe a satisfactory plan could be developed to justify reamortization and rescheduling of present FmHA loans, using a ST loan, if you were willing to sell enough land to pay off Federal Land Bank, and if you were willing to sell enough nonessential equipment to pay off all creditors other than FmHA. If you are interested in discussing such a plan you should meet with me before you appeal the FmHA county

Farmers Home Administration is an Equal Opportunity Lender.
Complaints of discrimination should be sent to:
Secretary of Agriculture, Washington D.C., 20250

office [illegible] regarding servicing actions you have requested.

(2) A loan to buy beef heifers cannot be approved because the planned operation is not feasible. ✓ precise lang on operation

If you have any questions about this action I would like the opportunity to explain in detail why your requests have not been approved, explain any possbile alternative, or provide any other information you would like. You may bring any additional information you may have and you may bring a representative or counsel if you wish. Please call 482-0636 for an appointment.

Applicants and borrowers generally have a right to appeal adverse decisions, but decisions based on certain reasons are not appealable. We have determined that the reason numbered (1) above is not appealable under FmHA regulations. You may however, write the Area Supervisor, National Appeals Staff, for a review of the accuracy of our finding that the decision is not appealable.

Supervisor agrees that explan could be devel [illegible] still be denied

Decision (2) above, and the earlier decisions on your request for Primary Loan Servicing may be appealed. A request for a hearing should be sent to the Farmers Home Administration, National Appeals Staff, 7777 Walnut Grove Road, Memphis, Tennessee 38119, postmarked no later than May 21.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Sincerely,

Harris W Putnam

Harris W. Putnam
Acting County Supervisor

Attachments

(2) Medium: These loans are secured but do not have
collateral value to fully protect the Government
interest.

(3) High: These loans are secured and fully collate
the Government's interest is fully protected.

c. Methodology

(1) Method 1 (See Section VI B of this exhibit) wil
first to develop an acceptable restructuring pl
will keep the borrower on the farm. If a rest
plan is not found which will keep the borrower
then Method 2 (See Section VI C of this exhibi
description) will be used to develop a restruc

(2) For both Method 1 and Method 2 loan terms will
maximum permitted by program regulations. Also
down amounts will be calculated so that the "
Available" to repay debt is equal to or as close
possible to the "Debt Repayment".

(3) Loans [illegible] for regular deferral will remain
but will be [illegible] or partial written down if ne
obtain [illegible] cash flow margins. Loans conver
Softwood [illegible] loans (if requested) will remain
Timber [illegible] and will not be written down becaus
down Softwood Timber loans decreases present val

[illegible] restructuring plan is not found to keep the borrowe
[illegible] the borrower, FmHA County Supervisor, and other L
[illegible] rework the borrower's farm plan to increase
[illegible] other debt, sell non-essential assets, improve
[illegible] debt and consider Softwood Timber loans and Conse
[illegible] if not originally requested by the Borrower
[illegible] program regulation).

[illegible] increase the [illegible] present value
[illegible] information provided by the borrower and the
[illegible] the restructuring of existing FmHA deb
[illegible] potential for the borrower to repay debt and remain
[illegible] losses.

[illegible] CALCULATION PROCESS

[illegible] LOAN [illegible] RATES

A. Obtain status information on each loan.

[illegible] The status information date (accrual date) must be a date after the
[illegible] payment or other transaction on the loan.

please confirm your thoughts.

4-26-89

Gilbert:

We have reviewed and considered the items in 1951-5, Exhibit J, Page 4, item 7.

Please refer to our letter dated April 21, and attachments for deciding on your next step.

Harris W Putnam

Attachment 5

United States
Department of
Agriculture

Farmers
Home
Administration

P. O. Box 192
Shelby, NC
28150

FmHA Instruction 1951-S
Exhibit E to Subpart S

"NOTIFICATION OF REQUEST FOR MEDIATION OR MEETING OF CREDITORS"

George Gilbert Greene
Nancy E. Greene
Route 2, Box 182
Shelby, North Carolina 28150

March 2, 1989

Dear Mr. & Mrs. Greene:

The Farmers Home Administration (FmHA) has carefully considered your request for primary loan servicing programs. Due to your debt with lenders other than FmHA, you are unable to develop a feasible plan. Your Farm and Home Plan must show that you have enough income after payment of your essential living and operating expenses and other non-FmHA debts to make an annual payment to FmHA of at least $(Not available). Your Farm and Plan shows that you have only $35,277 to make this annual payment. Attached are the calculations on which our decision is based.

We will schedule a meeting with you and your other creditors in an effort to reach agreements with them to adjust your debts sufficiently to permit you to develop a feasible plan of operation. The FmHA State Director will contract for a mediator or appoint an FmHA representative not previously involved in servicing of your account upon your written request to participate in the meeting with creditors. Please sign the attached acknowledgment within 30 days of the date of this letter. The acknowledgment will be your written request and consent to FmHA releasing information concerning your account to other creditors who participate in the meeting. (*)

If, with the adjustment of your debt, you are able to develop a feasible plan of operation which shows that you can make an annual payment to FmHA of at least $(Not available), FmHA will reconsider your application for primary loan servicing.

Sincerely,

Gertrude F. Ledbetter

(Mrs.) Gertrude F. Ledbetter
County Supervisor

Attachment: FmHA Instructions 1951-S, Exhibit E, Attachment 1
Debt & Loan Restructuring Analysis
Farm & Home Plan

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Complaints of discrimination should be sent to:
Secretary of Agriculture, Washington D.C., 20250

FmHA Instruction 1951-S
Exhibit E to Subpart S
Attachment 1

BORROWER'S REQUEST FOR MEETING OF CREDITORS AND ACKNOWLEDGMENT

I/We have been given a notice explaining that I/we are not eligible for primary loan service programs. FmHA has told me that due to my/our debt with other lenders it does not believe I/we can develop a feasible plan. I/we request that you schedule a meeting with my undersecured creditors to assist me/us in developing a feasible plan of operation. I/we consent to FmHA releasing information concerning my/our FmHA account(s) to these creditors to assist me in developing a feasible plan.

(Date)

(Borrower's signature)

Attachment 6

United States
Department of
Agriculture

Farmers
Home
Administration

Washington
D.C.
20250

FmHA AN NO. 1857 (1924)

January 27, 1989

SUBJECT: Development of Realistic Long Range Farm Budgets

TO: State Directors

ATTENTION: Farmer Programs Chiefs

PURPOSE/INTENDED OUTCOME

This Administrative Notice (AN) is issued to provide guidance on the development of realistic long range agricultural commodity prices and input costs. These prices and costs will be used for determination of farm budget feasibility following loan deferral. This information will also be used when conservation practices are required to bring the farm in compliance with the requirements in Exhibit M of FmHA Instruction 1940-G.

COMPARISON WITH PREVIOUS AN

This AN replaces AN 1751 (1924) dated April 27, 1988.

IMPLEMENTATION RESPONSIBILITIES

As before in AN 1751, projected levels of production and expense must be supported by the borrower's history. Projected income and expense should be based on the borrower's records. If the borrower does not have income and expense records, the County Supervisor will use ASCS records, Agricultural Extension Service data, county averages and/or reliable sources of data as the basis for income and expense projections.

Borrowers who intend to participate in government programs should include payments from such programs in their budget. For purposes of these calculations FmHA will assume that government programs will continue in the future similar to those currently active.

EXPIRATION DATE: January 31, 1990 Filing Instruction: Preceding FmHA Instruction 1924-B

FmHA Farmers Home Administration is an Equal Opportunity Lender
Complaints of discrimination should be sent to:
Secretary of Agriculture, Washington, D.C. 20250

Exhibit #13 on back of Ex. A.

Each State Director must establish the average 1988 price received for each agricultural commodity by county, region or district. Exhibit B provides a national average with which states can realistically compare their developed averages. These national averages are not, however, to replace state development of commodity prices. For certain items the State Director may elect to set an average unit price for the entire state if the item shows little or no deviation across the state.

In most cases, price data is available from State Departments of Agriculture, State Offices of the USDA National Agricultural Statistics Service, or Land Grant Universities. If local data is not available, the prices that most nearly reflect local area prices must be used.

Exhibit A provides a table of projections for the percentage change of prices received and prices paid by farmers. In many cases, projected change factors are not available for unique, locally grown products such as crawfish, guava or rabbits. Local buyers, processors, Agricultural Extension Service, or similar sources should be contacted to obtain the best estimates available for such products.

* Borrowers with adequate records to compute a weighted average price received for commodities sold in 1988 will have their 1988 actual unit prices used in the projection calculations. Otherwise, the average price as determined by the State Director will be used in these calculations. Similarly, production and living expenses (prices paid by farmers) will be calculated based on 1988 actual unit costs if available.

EXAMPLE: Wheat

Local avg. cash price x year % change = price adjustment
$3.70 /bu (1988) x -12.2% (1993) = - $0.4514
Price adjustment + 1988 avg. cash price = 1993 projected price
-$0.45 + $3.70 /bu = $3.25 /bu

If the State Director sees a critical need to change selected commodity projections in Exhibit A then those commodities and a detailed justification should be sent to the National Office for approval. Any changes you wish to make can be sent by Telemail to NO.PDS or by Facsimile to FTS 382-8098 or commercial (202) 382-8098 addressed to Director, Farmer Programs, Program Development Staff.

Michael C. Williams

NEAL SOX JOHNSON
for Acting Administrator

Attachments

Sent by telefacsimile on 1/27/89 at 4:01 Pm by ASD. The State Director should advise other personnel as appropriate.

LONG RANGE FARM BUDGET PROJECTIONS
Source: Economic Research Service
FmHA, FP, Program Development Staff
January 14, 1989

FmHA AN 1857(1924)
Exhibit A

CASH COMMODITY PRICES RECEIVED

< Projected % Change From 1988 >

COMMODITY	1989	1990	1991	1992	1993	1994	1995
Wheat	-2.7	-6.8	-9.5	-10.8	-12.2	-13.5	-13.5
Corn	-25.0	-28.8	-30.8	-28.8	-19.2	-15.4	-19.2
Sorghum	-23.4	-27.7	-29.8	-27.7	-17.0	-17.0	-19.1
Barley	-18.5	-22.2	-25.9	-25.9	-24.1	-25.9	-25.9
Oats	-34.0	-35.8	-37.7	-37.7	-34.0	-34.0	-34.0
Soybeans	-26.5	-29.0	-29.0	-28.4	-25.8	-25.2	-25.2
Cotton	12.2	12.2	18.4	22.4	24.5	27.6	26.5
Rice	-29.2	-28.3	-27.5	-26.7	-25.8	-25.0	-23.3
SB Oil	0.0	-6.5	-8.7	-10.9	-13.0	-13.0	-13.0
SB Meal	-33.3	-33.3	-32.4	-31.4	-27.5	-26.5	-26.5
Cattle	5.1	7.9	0.4	4.2	-2.5	-5.1	-3.5
Calves	5.1	7.9	0.4	4.2	2.5	-5.2	-3.5
Hogs	5.1	15.7	3.9	-3.2	11.0	18.1	11.0
Broilers	24.5	15.8	4.2	13.5	18.1	11.2	18.1
Turkeys	58.6	41.1	45.6	41.1	43.3	47.8	52.3
Eggs	22.5	19.9	21.6	26.8	18.2	28.5	35.3
Milk	1.1	-5.8	-9.9	-10.7	-10.7	-10.7	-14.0
Fruit	[illegible]	-10.6	-8.5	-6.6	-3.5	0.0	2.2
Vegetables	[illegible]	11.0	14.3	17.4	20.2	22.9	25.8
TOBACCO:							
Flue-cured	[illegible]	-0.2	2.2	5.3	8.4	10.9	13.4
Burley	[illegible]	[illegible]	8.1	10.6	13.8	16.3	18.8
SUGAR:							
Raw, domestic	[illegible]	-1.8	-0.2	0.5	1.1	1.8	2.5
Sugarbeet	[illegible]	-3.4	-4.7	4.1	-3.4	-2.8	-2.1
Sugarcane	[illegible]	-1.0	-5.4	-4.8	4.1	-3.4	-2.6

PRODUCTION AND LIVING EXPENSES

	1989	1990	1991	1992	1993	1994	1995
Feed	[illegible]	[illegible]	-23.1	-23.1	[illegible]	-9.4	-9.4
Feeder Livestock	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	2.7	-1.1
Seed	[illegible]	[illegible]	3.2	[illegible]	[illegible]	[illegible]	9.1
Fertilizer	[illegible]	[illegible]	10.3	15.0	18.8	24.0	28.2
Ag. Chemicals	[illegible]	[illegible]	[illegible]	11.9	14.3	17.6	20.3
Fuels	[illegible]	[illegible]	[illegible]	15.5	10.9	25.9	30.6
Farm & Motor Sup.	[illegible]	2.2	[illegible]	14.5	17.3	20.0	22.1
Autos & Trucks	[illegible]	6.9	[illegible]	12.2	5.4	17.9	20.4
Tractors	[illegible]	10.0	[illegible]	[illegible]	[illegible]	21.3	23.6
Other Machinery	[illegible]	11.0	[illegible]	[illegible]	[illegible]	[illegible]	23.6
Bldg. & Fencing	1.4	2.8	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Farm Serv. & Rent	2.0	3.8	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Interest	1.0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Taxes	1.4	2.8	[illegible]	[illegible]	[illegible]	[illegible]	11.5
Wages	4.5	10.0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Family Living (CPI)	4.1	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	25.8
Other Expenses	4.0	5.9	[illegible]	10.1	12.8	15.8	18.7

23-1/2 178

PROJECTED LONG RANGE FARM PRICES

Source: Economic Research Service
==================================
FmHA, FP, Program Development Staff
January 14, 1989

FmHA AN NO. 1857(1924)
Exhibit B

------------< PROJECTED CASH COMMODITY PRICES RECEIVED >-----------

COMMODITY	UNITS	1988	1989	1990	1991	1992	1993	1994	1995
Wheat	$/bu	3.70	3.60	3.45	3.35	3.30	3.25	3.20	3.20
Corn	$/bu	2.60	1.95	1.85	1.80	1.85	2.10	2.20	2.10
Sorghum	$/bu	2.35	1.80	1.70	1.65	1.70	1.95	1.95	1.90
Barley	$/bu	2.70	2.20	2.10	2.00	2.00	2.05	2.00	2.00
Oats	$/bu	2.65	1.75	1.70	1.65	1.65	1.75	1.75	1.75
Soybeans	$/bu	7.75	5.70	5.50	5.50	5.55	5.75	5.80	5.80
Cotton	$/lb	0.49	0.55	0.55	0.58	0.60	0.61	0.63	0.62
Rice	$/cwt	5.00	4.25	4.30	4.35	4.40	4.45	4.50	4.60
SB Oil	cnt/lb	23.00	23.00	21.50	21.00	20.50	0.20	0.20	0.20
SB Meal	$/ton	255.00	170.00	170.00	172.50	175.00	185.00	187.50	187.50
Cattle	$/cwt	65.85	69.19	71.08	66.13	68.61	64.23	62.46	63.52
Calves	$/cwt	79.02	83.03	85.30	79.35	82.33	77.07	74.95	76.23
Hogs	$/cwt	42.35	44.50	49.00	44.00	41.00	47.00	50.00	47.00
Broilers	cnt/lb	25.90	32.25	30.00	27.00	29.40	30.60	28.80	30.60
Turkeys	cnt/lb	31.70	50.27	44.73	46.15	44.73	45.44	46.86	48.28
Eggs	cnt/doz	50.50	61.85	60.55	61.42	64.01	59.69	64.88	68.34
Milk	$/cwt	12.21	12.35	11.50	11.00	10.90	10.90	10.90	10.50
TOBACCO:									
Flue-cured	cnt/lb	161.40	160.00	161.00	165.00	170.00	175.00	179.00	183.00
Burley	cnt/lb	160.00	165.00	169.00	173.00	177.00	182.00	186.00	190.00
SUGAR:									
Raw, domestic	cnt/lb	22.10	21.80	21.92	22.06	22.20	22.35	22.50	22.65
Sugarbeet	$/ton	39.60	36.32	36.53	36.77	37.01	37.27	37.53	37.79
Sugarcane	$/ton	29.20	27.29	27.44	27.61	27.80	28.00	28.22	28.44

Mountain
Farm Credit Service

Administrative Office
701 Brevard Road, P. O. Box 6350
Asheville, North Carolina 28818
704/665-2393

October 12, 1988

Mr. Peter J. Sarda
Attorney at Law
3605 Glenwood Avenue, Suite 390
Raleigh, North Carolina 27612

Dear Mr. Sarda:

In Re: Zeb B. Cabe, Jr.
FLB Loan # 04-2757433-1

It is my understanding that your clients have agreed to the restructure plan we recently discussed. A recap of the plan we are willing to approve is as follows:

- The current loan balance (approximately $180,000) including interest, will be reamortized for one (1) year effective 11/01/88. The entire balance will be due and payable on 11/01/89.
- The interest rate will be fixed at 12% per annum for the reamortization period.
- Payments will be scheduled on a monthly basis beginning 12/01/88 and will be in the amount of $1,800/month. This payment will only service the monthly interest accrual.
- Borrowers will execute a milk assignment in the amount of $1,800/month.
- The borrowers are expected to aggressively sell sufficient assets to liquidate this debt on or before 11/01/89.
- The borrowers will guarantee the Federal Land Bank Association that they will take no actions to hinder the creditor's foreclosure rights if the loan is not liquidated on or before the due date. This can be accomplished with the Memorandum of Understanding (draft copy attached).
- The borrowers will formally request FmHA to release the milk proceeds.
- This reamortization is to be closed prior to 11/01/88.

The Farm Credit System

PREPARED STATEMENT OF KEITH WIENS, EXECUTIVE DIRECTOR, OHIO FARM ALLIANCE, GLOUSTER, OH

OHIO FARM ALLIANCE

A report on the implementation of the Agricultural Credit Act of 1987: Case studies from Ohio.

Respectfully submitted by: Keith Wiens, Executive Director, Ohio Farm Alliance.

INTRODUCTION

The following case studies are a description of problems the Ohio Farm Alliance has identified in regard to the implementation of the Agricultural Credit Act of 1987. The information contained in this report comes from farmer-borrowers of FmHA as reported to Ohio Farm Alliance Executive Director, Keith Wiens.

CASE STUDY: CARROLL COUNTY

OVERVIEW

The Ohio Farm Alliance has received complaints from four farmers in Carroll County concerning the Farmers Home Administration office in Carrollton, Ohio. Additional farmers were subsequently contacted as part of a preliminary investigation being done by the Ohio Farm Alliance. These farmers expressed considerable distrust and in some cases extreme antagonism toward the County Supervisor, George Boka. These bitter feelings have led to a breakdown of the working relationship between the farmers and FmHA. An often repeated comment of the farmers concerning Mr. Boka was that he just won't work with them. Several farmers reported that FmHA changed their Farm and Home Plan without telling them. These changes were discovered by examining the DALR$ printout that the farmers received. Additional allegations of violations of FmHA rules have been made and are being investigated.

FARMER NUMBER ONE

Ohio Farm Alliance Executive Director met with FmHA Assistant Supervisor Amy Newman and County Supervisor George Boka, the farmer, and a farm management consultant hired by the farmer, to discuss the changes FmHA had made in the farmer's plan. FmHA Supervisor Boka and Assistant Supervisor, Amy Newman stated they had made changes in the farmer's plan based on information they had about his farm, his 5 year history, and based on Ohio State University figures. They admitted that they did not let the farmer know that they had changed his plan, nor did they seek his approval or acknowledgement. They did not believe they were required to do so.

Ohio Farm Alliance sought a legal opinion concerning this procedure. It was one attorney's opinion that this action was a clear violation of FmHA's rules and was possibly a constitutional violation of the farmers' rights.

County Supervisor Boka stated that it was FmHA's responsibility to gather information from the farmer, from the farmer's file and farm history, and from other sources in order to put together a realistic plan. Given that many farmers have reported a breakdown in communication with the Carrollton FmHA office, and given that the Carrollton office does not verify the accuracy of all the numbers that they use in the DALR$ program with the farmer, it appears that this particular FmHA office is unable to fulfill their responsibility to prepare a realistic plan.

When the Ohio Farm Alliance met with FmHA and the farmer to request that FmHA run DALR$ again, FmHA employees were cooperative and willing to make changes based on more complete information. However, previous efforts by the farmer and his consultant to come up with a new plan had failed, in part because of the bitter feelings and lack of trust by the farmer in the FmHA employees.

FARMERS TWO AND THREE

Two farmers Ohio Farm Alliance talked to indicated they were being denied primary loan servicing because they had violated a loan agreement with FmHA. Both farmers denied the allegation. In one case, the alleged violation had occurred over 15 years ago. This farmer has had numerous dealings with FmHA in the meantime including a restructuring of debts several years ago. It appears that the allegation of a violation of loan agreement is being used by FmHA as an excuse to deny preservation loan servicing to certain farmers in Carroll County.

Assistant Supervisor, Amy Newman, told a farmer that she was handling 11 applications for loan servicing. She said they would all be rejected. She also said something to the effect that "this whole program pissed me off." This farmer was left with the impression that FmHA had no intention of honoring Congress' intent.

SUMMARY

The actions of FmHA personnel are causing extreme anxiety in the farm families affected. It appears as though some families may lose their farms unnecessarily due a denial of their full loan servicing rights.

In summary, a serious problem exists in the Carrollton FmHA office. It is hard to imagine that any farmer-borrower in this office will have their loan serviced properly under the current conditions. There appears to exist a systematic denial of farmers' rights under the Agricultural Credit Act of 1987.

CASE STUDY: MUSKINGUM COUNTY

Ohio Farm Alliance has been working primarily with one farmer in Muskingum County. A dispute has arisen concerning the release of operating funds for a dairy farmer pending the outcome of preservation loan servicing. The farmer has been waiting for more than a month for FmHA to schedule a creditors meeting. In the meantime, corn planting time has arrived and the farmer needs a release of funds from FmHA in order to put out a corn crop. The farmer has requested release of funds from his milk assignment and from the sale of cull cows to plant corn and to purchase feed for his cows. While one such request was approved at the request of the Ohio Farm Alliance, all other requests have been denied. FmHA claims that they only receive 16 percent of the milk assignment and therefore do not have to release any funds. They believe he can secure adequate operating funds from the remainder of his milk check. The farmer's position is that he cannot do so. His major feed suppliers and other creditors are already carrying a sizable amount of unsecured debt and they cannot grant further credit.

The farmer has been in touch with his other major creditors in preparation for the creditors meeting. He believes that he can come up with a workable plan with his unsecured creditors if FmHA grants him a deferral. Art Jones, regional supervisor, told the farmer and the Ohio Farm Alliance that he believed a 5-year deferral would work if the farmer's other creditors made some concessions. With such a solution in sight, FmHA's refusal to release any funds at this time seems unreasonable. While such a decision might be legal, it seems to be contradictory to the stated intent of Congress that FmHA be a lender with a goal of maintaining family farms. It also seems to contradict statements made by FmHA to the media that FmHA was doing everything possible to work out a solution with the farmers.

The farmer recently made a change in regard to where he sold his milk. FmHA sent a letter to the new purchaser requesting all milk checks be written with both the farmer's name and FmHA. This is effectively asking for 100 percent of the milk assignment. Such a situation would leave the farmer with no funds to meet any operating expenses or make payments on any other debts. This action by FmHA would seem to force the farmer either into filing bankruptcy or face liquidation without having had the opportunity of utilizing the new loan servicing procedures that he applied for. The Ohio Farm Alliance believes that such action is contrary to the intent of Congress in passing the Agricultural Credit Act of 1987.

When Ohio Farm Alliance Executive Director Wiens met with FmHA County Supervisor Dora Jean Drake to discuss the release of operating funds, Ms. Drake had apparently never seen the new regulations (published in the Federal Register, September 14, 1988) concerning release of operating funds. After she was shown these regulations by the Ohio Farm Alliance there remained a difference of interpretation of those rules. This incident, while relatively minor, indicates a lack of knowledge on the part of this supervisor in this particular change in FmHA brought about by the Ag Credit Act of 1987. This exemplifies what Ohio Farm Alliance considers to be a generally inadequate training of FmHA personnel concerning the new law and regulations.

Subsequent correspondence between the farmer and the supervisor seems to indicate she has researched her legal options for denying a release of funds. Unfortunately, there is no corresponding evidence that she researched her legal options available for helping the farmer.

This whole situation would never have arisen had FmHA promptly processed the farmer's loan servicing application. It has now been over 4 months since his application was filed with FmHA. The farmer was told over a month ago that a meeting with other creditors would be scheduled soon. It has not been scheduled by FmHA nor have they given any indication to the farmer about the reason for the delay. This delay on the part of FmHA is causing the farmer economic and emotional stress. In the meantime, FmHA Is taking actions which are making the situation worse. Given that FmHA has indicated a 5-year deferral would work if other creditors make adequate concessions, given that the farmers has indications from his major creditors that they will make concessions, given that the current delay is the responsibility of FmHA, given that FmHA refuses to take any steps to alleviate the problems this delay is causing the farmer, it appears that the actions of the FmHA County Supervisor will result in denying this farmer his rights to preservation loan servicing.

A broader problem exists with this particular FmHA office. The County Supervisor, Dora Jean Drake, is married to the state head of farmer programs of FmHA, David Drake. Several farmers expressed the opinion that it would be useless to appeal a decision by the County Supervisor because they believed her husband would always back her decisions. They also believed that any appeal or complaint about Ms. Drake would impact negatively on them in any future dealings with FmHA. While no specific instances of this actually occurring were reported, it seems to clearly have a chilling effect on the farmer-borrowers from this office. Effectively, farmer-borrowers from this office have experienced a loss of full appeal rights due to this perceived conflict of interest.

SUMMARY

There exists a widespread lack of knowledge among farmers about their new rights as FmHA borrowers and about how the new loan servicing works. The Ohio Farm Alliance has provided training and materials to hundreds of farm families and these farmers report this information to be extremely helpful. Many of these farmers have reported that they know the new procedures better than the FmHA County Supervisor or Assistant they are working with. Some farmers have reported their local FmHA offices to be extremely helpful. For these farmers, the new law is reported to be working well. It appears that a major factor which will determine whether a farmer is restructured or foreclosed may have more to do with the attitude and knowledge of the local FmHA office than with the farmer's actual financial situation.

Finally, it should be noted that all FmHA personnel that the Ohio Farm Alliance has communicated with have been courteous and cooperative. We expect that some of the problems identified will be resolved either at the local or State level as a result of further dialog between FmHA and the Ohio Farm Alliance. Unfortunately, there may be many other farmers who will soon lose their farms unnecessarily because they did not ask the Ohio Farm Alliance for help and because they do not know how the process is supposed to work.

PREPARED STATEMENT OF RON JOHNSON, RESEARCH ANALYST, OKLAHOMA FAMILY FARM & RURAL SERVICES (OFFRS), OKLAHOMA CITY, OK

OKLAHOMA FAMILY FARM & RURAL SERVICES (OFFRS)

Our organization has obtained a copy of the Farmers Home Administration's DALR$ computer program, and has successfully trained over 400 farmers in understanding its functions. Very few of those farmers had previous knowledge or experience in understanding what criteria the DALR$ program used to determine the feasibility of restructuring their loans.

We have initiated an educational program at OFFRS that has operated 7 days a week since February 1, 1989. This program has worked one on one with farmers explaining many of the steps used by DALR$ to determine feasibility. We are grateful to the FmHA National and State Offices for their willingness to assist in our understanding of the program. The narrow time constraints placed on submitting information has presented a real challenge for everyone. We hope this brief report will set forth some problems that we have encountered in the process, and offer some possible solutions.

As stated, many farmers have not had adequate training on how to design their plan of restructuring to meet the criteria of the DALR$ program. They were instead given a packet of FmHA rules that explain the legal requirements. Although these rules are explicit in a legal sense, they do not offer adequate explanations of how to successfully design a feasible restructuring plan. It's like having a football rule book to read before they hand you the ball. Although the rules make no mention of plays, you better damn well know which direction to run.

Specifically, we have observed that many farmers have not understood how to properly fill out FmHA's new Farm and Home Plan (Form FmHA 431-2). The Farm and Home Plan has always been FmHA's most fundamental financial instrument used in determining the feasibility of the farm operations. In some respects it is a financial statement, cash-flow statement, disclosure statement, repayment schedule, and summary of operations statement, rolled into one document. Although this document remains to be a sound measurement of the farmers operations, FmHA has made significant changes in its design.

These changes in the Farm and Home Plan have created an entirely different approach to determining feasibility of restructuring. For example, for the past several decades farmers have been trained to project maximum production levels in the Farm and Home Plan. More specifically, in previous years, a feasible plan was achieved if the "Balance Available" (line 16 of Section J) was greater than the "Total Debt Payments," (Section K).

Conversely, the now Farm and Home Plan, incorporated as one of the nine required forms for restructuring, determines that the farmers plan is not eligible for restructuring if the "Balance Available" (line 16 of Section J) is equal to or greater than the "Total Debt Payments" (Section K).

Conversely, the new Farm and Home Plan, incorporated as one of the nine required forms for restructuring, determines that the farmers plan is not eligible for restructuring if the "Balance Available" (line 16 of Section J) is equal to or greater than the "Total Debt Payments" (Section K).

Ironically, this same Farm and Home Plan, submitted for a loan application, would be determined feasible.

A possible solution to this confusion may be to design a new form that specifically list the criteria needed to develop a feasible plan when using the DALR$ computer program. For example, such form could solicit information from the farmer that would flow into certain pass/fail categories. This method would allow farmers to effectively design their operations around a restructured plan.

We have discovered many viable "what if" combinations by having the DALR$ program to explore farmers operations. In many cases the farmer, through understanding the criteria, could actually reorganize the operation, for example by selling nonessential assets which would in turn create a feasible operation. In other cases simply adding a few more cows to excess grassland creates a feasible plan.

We understand that a few farms will not be able to restructure, and consequently, some will be forced out of business. Even in those rare cases we hope that Congress will address the need to assist with transitional programs.

Restructuring is, in effect, a means to arrive at a goal of keeping farmers in business while costing the Government no more than it would incur through foreclosure. There are enough opposing forces such as weather, market pressures, insects, rising fuel prices, etc. that are creating unbearable hardships on America's family farmers.

The point is when farmers are not given the information that will allow them to explore every viable alternative available, and present that plan to FmHA, FmHA becomes a part of the opposing forces. When this happens we all lose.

FmHA has the coaching staff for one of America's largest industrial teams; family farmers. With a little Sam Walton attitude the whole industry could be turned around in a few short months.

Thank you.

Prepared Statement of Peter Brent, Hotline Coordinator, Prairiefire Rural Action, Des Moines, IA

PRAIRIEFIRE RURAL ACTION

My name is Peter Brent. I am the hotline coordinator for Prairiefire and the Iowa Farm Unity Coalition. I thank the committee for the opportunity to speak on behalf of delinquent borrowers of FmHA. The following testimony is anecdotal in nature.

Every day, either over the telephone or in person I hear from farmers who are trying to work with FmHA to resolve their financial problem. The borrower feels frustration and anger with the system (FmHA) because nothing seems to work the way it was supposed to. Some examples of that are:

(1) Farmers are offered a deal which they know is not workable this year or in the future and are expected to agree to it. For example, a farmer has been raising and selling feeder pigs as well as feeding some out to market weight. FmHA tells the farmer he should stop selling feeder pigs and just feed 500 hogs to market

weight. The FmHA's reasoning is to show that the farmer can cash-flow even though its not possible, given the current prices for hogs. The hog market in central Iowa presently is running around $36 to $37 per hundredweight. Feeder pigs are approximately $33-$44 per head. FmHA is using a price of $45 for fat hogs. The difference between the real market and the FmHA's figures make the farmers cash-flow look better by roughly $10,000. The farmer knows this is false, but it is now time to go to the field and he just wants to get things square with FmHA. His question "what happens in the fall when I'm not able to make the payment?"

(2) Another problem has to do with time delays. Farmers were under the impression that they had to return their paperwork within the 45-day limit set by FmHA and that FmHA was to give them an answer within 60 days which is stated in the rules. A number of farmers now find themselves just getting their answer and it's time to go to the field. Many hoped for a speedy resolution to the problem at hand. Instead they now have to figure out how to get the farming done, to find financing for the crop and operating plus deal with FmHA procedures. The stress level of farm families is increasing because of the lateness of decisions and the frustration that nothing will be done. A question continually asked is, "What can we do to make FmHA give us the answer on our plan?" My response has been, "not much unless you feel that you can afford to take this matter to court." Again, those least able to afford this type of expense find themselves having to consider it.

(3) I have talked with a number of farmers who were given a value on their property by FmHA and then told by FmHA that the value is no longer valid. Today a farmer called to say that he is willing to take the net recovery buyout figure that was given to him this winter but now FmHA has sent him a letter stating that they made a mistake and the new net recovery value is $50,000 higher. No explanation or reason was given other than to say that they made a mistake. After all this time it would seem reasonable to ask the family to come to the office or the supervisor go to the farm home to discuss and explain this mistake that FmHA made. Instead, only a letter and no explanation.

(4) Something else that continually comes up is the tax question and shared appreciation. Many farmers are either afraid or suspicious of this question. If they make a deal with FmHA, they don't know if it will adversely impact them in later years. I wouldn't guess how many farm people have pointed out this uncertainty. They wonder if they will find themselves with a bigger problem with the FmHA in the future or, worse yet, with the Internal Revenue Service when they are older and wanting to retire or slow down.

(5) There also seems to be a problem with FmHA's willingness to accept the independent appraisal on real estate values. I know of cases where the farmer has used FmHA approved appraisers but FmHA will not accept or consider figures provided by the appraisers. Because of this stubbornness FmHA then takes the farmer to mediation. The farmer thinks that now FmHA will have a change of heart, but FmHA still refuses to accept, negotiate or compromise on a reasonable value for the property. If FmHA takes this kind of hard stance, the only recourse the farmer has is the appeal process and the hope that the appeal officer will understand and negotiate fairly and realistically. The farm family is left with unproductive time and tremendous amount of stress to add to what has already been suffered. A lot of time and energy could be saved and the intent of the law better served if FmHA could or would be reasonable about what is really out there for value. Having talked with a number of mediators in Iowa, this is a very large problem to be dealt with.

FmHA's attitude has trapped the agency into thinking it is always right and that it can't make mistakes. Personnel often come across as being very arrogant and domineering which makes it hard for farmers to believe or work with FmHA. FmHA should be thinking about what is in the best interest of both FmHA and the farm family. The whole idea of the Farm Credit Act was to keep as many family farmers out on their farms as possible and save the taxpayers money in the process. Instead we witness an attitude of "let's get this over with as quickly as possible" and don't worry about that farm family or what's in the Government's best interest.

(6) A problem that has not reared its ugly head yet, but will soon, is the guaranteed loan program. As reported in the Des Moines Register on March 15, 1989, guaranteed loans nationwide total $3.6 billion. We know a number of these loans will be in trouble. Because of the lateness in publishing the rules the problem will be delayed until later in the fall. When FmHA finally has to deal with these loans, I see the commercial lenders (bankers and FCS) and the agency doing the negotiating, with the farmer caught in the middle having little impact or control over his livelihood.

In closing, I'd like to say that the intent of the legislation (1987 Farm Credit Act) was good and the idea was sound. Even though the overall attitude of FmHA is negative and the bureaucracy (FmHA) has taken this bill and made it into a nightmare for some farm families, it should be pointed out there are a number of County Supervisors who are trying to do the right thing. I would like to thank them for their energy and effort on behalf of farm families everywhere. Even with that said, I also recognize that there is a need for the FmHA program to continue. People who would like to farm and have very little resources other than their muscles and brains need this type of program. Without it only the lucky few will be able to farm.

Thank you.

PREPARED STATEMENT OF IDAHO RURAL COUNCIL, PAM BALDWIN, PRESIDENT, CAREY, ID

IDAHO RURAL COUNCIL

On behalf of the Board of Directors of the Idaho Rural Council, a statewide farm advocacy organization, I respectfully submit the following testimony for the record of the oversight hearing of the Senate Agriculture Committee held in Washington, DC on May 9, 1989, on the implementation of the Agricultural Credit Act of 1987.

Let me preface these observations by explaining the grim fact that Idaho statistically has more FmHA borrowers in trouble than any other Western State. FmHA personnel have informed us that close to 1,500 loan servicing packets were distributed in Idaho. Half of those were completed and returned.

The Idaho Rural Council determined early the severity of the credit issue in our State when its chief industry, agriculture, was hard hit by economic depression. As an organization, we took an active interest in the congressional efforts preceding the passage of the Agricultural Credit Act of 1987 encouraging lawmakers to include borrowers' rights in the final legislation. Once a law was passed, we commented on the proposed rules at some length.

In Idaho, the Council became the only farm group to extend help to borrowers. Our members attended seminars on the implementation of the act and with this information, we ran meetings throughout the State on loan servicing procedures, often working with FmHA county and State personnel. In a 6-week period, we reached over 500 FmHA borrowers, financial counselors and attorneys who attended our workshops.

But despite this attempt to help farmers, we were dismayed by the holiday timing of notices to restructure and the 45-day time limit for such an enormous amount of filing work. We made our position known to our congressional delegation, the Secretary of Agriculture and the State FmHA office in Idaho. Throughout December we answered telephone hotline questions from borrowers, many of whom were unable to get their questions answered elsewhere. There was an understandable sense of panic in most of these calls.

There was a hiatus in our work after the 45-day deadline passed but now that the agency is beginning to act on these restructuring proposals, our credit hotline has become active again.

The Idaho Rural Council, has a long term interest in credit stability in agriculture and in the short term, a concern about what is happening to farmers who have submitted restructuring proposals. This coupled with an eye on today's hearing led us to prepare and distribute a questionnaire to the 1,500 borrowers who presumably had received FmHA packets over the 1988 holidays.

The survey was initiated so that our organization could better help borrowers in trouble. It was mailed in mid-April with only a week for responses. Despite this quick turnaround, we were surprised to receive over 125 forms from borrowers.

Our findings are far from scientific but they do correspond to the concerns raised repeatedly over the telephone credit hotline. With this information, the basic problems with the restructuring process become clear.

First, very few applicants have had their proposals accepted on the first try. Rather there seems to be the need to negotiate and appeal before any resolution can be reached. There is some question about these additional steps when many borrowers feel their final agreement is comparable to their first submission. Those who accept the initial rejection without challenge are rarely offered help.

Second, there is obvious discrepancy from county to county, from State to State on the restructuring process. Too often County Supervisors reject one proposal only to approve a similar program a week later. Repeatedly, we hear that some County Supervisors have been antagonistic. The sense of confidence and trust, in the FmHA personnel and in the process, is limited.

Third, it is taking too long to respond to borrowers many of whom cannot continue to farm without budgets and funds in place. Despite mandated time schedules, many of the borrowers who restructured in December and January still have not heard if their plan is approved and with it the operating funds they need to plant crops. Many ask why they had to complete their work within 45 days and now must wait well over 90 days to hear from FmHA.

As an organization we requested an extension of the 45-day filing period when the inadequacy of that time became apparent in December. Today we continue to feel that the process must include a longer timeframe if borrowers are to fully comply with proposal demands. Further, it is now clear that 60 days is an inadequate schedule for FmHA to meet its obligations.

Fourth, even after restructuring takes place many people do not have the money they need to succeed in the new plan. Many farm families have had to figure in off-farm jobs to make their operations viable. Others are skeptical they have enough to live on and meet farm expenses working with the FmHA numbers but they signoff rather than lose their livelihood. The Idaho Rural Council is concerned these agreements are creating a new class of rural poor.

Fifth, it is difficult to pull creditors together to reach a settlement with no mediation requirement. Idaho has no State mediation program and with no congressional directive, creditors have refused to appear at voluntary negotiation sessions stalling or limiting settlement opportunities.

A profile of the borrowers who responded to the Idaho Rural Council survey shows that 90 percent are farming today. The majority of them have been farming for 20–25 years, followed closely by those who had been farming 26 to 50 years. Fifty-seven percent of them raise hay, grain and row crops, 34 percent are livestock producers. The remaining farmers in the survey have dairy, hog, orchard or specialty crop operations.

In response to financial inquiries, 61 percent said they could meet their basic monthly expenses although a number explained this is because they have off-farm jobs. As many as 32 percent said they are unable to meet basic expenses.

Thirty percent said they have enough operating money for the year, 26 percent said they do not. The majority, over 40 percent, answered "maybe" explaining that the FmHA restructuring results would determine if they have enough operating money.

Eighty-nine percent of those responding to the survey completed and submitted the FmHA packet. Ten respondents claimed they never received one (although our mailing list was the one FmHA used to notify farmers of loan servicing).

Thirty-nine percent of those who applied for restructuring have had their proposals approved although a number of these farmers claim they had to negotiate repeatedly and some express strong fears that they cannot survive on the settlement. Another 35 percent have been rejected and finally 24 percent have proposals pending—some in this category claim they've waited over 90 days to hear from FmHA.

Finally, we used the survey to determine if farmers understood the tax implications on debt write-down in restructuring. Twenty-six percent knew it could be taxed, 12 percent said it could not, while most, 62 percent, simply didn't know. The Idaho Rural Council is concerned that the tax burden, if not lifted from this process, could push many farm families over the edge.

Our experiences in Idaho led us to believe that there are still a number of farmers in trouble. Those who restructure loans are expected to jump through any number of hoops before their efforts are approved and then they may not be left enough cash to realistically operate their farms.

For the most part the State office has been helpful, but a number of borrowers have received poor treatment at the hands of their County Supervisors and through decisions which vary from county to county and farmer to farmer. There is the need to set up realistic deadlines for restructuring that will not penalize farmers who depend on the results. Finally, we recommend mediation be incorporated into the process to expedite and facilitate settlement.

We respectfully submit these ideas with the hope that Congress can take action to rectify the problems in the law. The Idaho Rural Council would like to see the Agricultural Credit Act work as Congress intended. It is difficult to watch farmers crippled by bad credit policies and ultimately forced into bankruptcy to save their homes and businesses. We know the Agricultural Credit Act can, if properly implemented, provide the best solutions to the national credit dilemma.

Sample

CONFIDENTIAL FmHA/FCS BORROWERS SURVEY
- IDAHO RURAL COUNCIL -

Please answer all questions applicable to your situation and return the questionaire in the envelope provided. Feel free to attach extra paper for additional comments. Phone 726-4553, 345-3689 or 888-2984 with questions.

FCS borrowers, please skip questions 1, 2 and 3. FmHA borrowers, skip 4 and 5

****

1) *(FmHA only.)* Were you sent a debt restructuring packet? YES NO
If not, please skip down to question 18.

2) *(FmHA only.)* If yes, did you turn it in? YES NO

3) *(FmHA only.)* When did you turn it in? ____________19____.(Approx. OK)

4) *(FCS only.)* Did you attempt to restructure FCS debt? YES NO
If not, please skip down to question 18.

5) *(FCS only.)* If yes, when? BEFORE JANUARY 6, 1988 AFTER JANUARY 6, 1988

6) Did you have help putting together your restructuring proposal or packet?

YES NO

7) If yes, from whom?

Friend Lawyer Consultant Accountant FmHA Employee FCS Employee

Other (please describe) ____

8) Did you get it-your restructuring proposal or packet-all completed?

YES NO

9) If you did not complete it, why not?

Could not get needed information. Needed assistance.

Told not to by: Lawyer Consultant Accountant FmHA employee

FCS Employee Friend Other (Please describe) ______________________

10) Did the lender(s) respond within 60 days?

FmHA YES NO FCS YES NO

11) Did the lender order an appraisal? YES NO

11a) Was the lender's appraisal accurate? YES NO

12) Was your proposal accepted? YES NO

13) If not, what was the reason?

*(Please describe)*____

____

14) If your debt was not restructured, did you appeal? YES NO

15) If you appealed, what was the result? REJECTED GRANTED

CONFIDENTIAL SURVEY - PAGE TWO

16) If your appeal was rejected, what steps did you take next?

(Please descibe.)____

____

17) Can debt write-down in a restructuring be taxed as income?

YES NO DON'T KNOW

18) If you did not turn in a packet or make a proposal, why not?

No need to restructure.
I no longer farm.
Not enough time.
I needed assistance.
Already in settlement.
My lawyer said not to.
I just got it.

It would do no good.
I did not understand the forms.
I was concerned about the tax consequences.
I sought bankruptcy instead.
County supervisor said not to.
I am payed up, no delinquent debt.
No reason.

Other
(*Please describe*)____

19) Are you farming or ranching this year?

YES NO

20) How long have you been farming or ranching? ______years.

21) What type of farm or ranch do you operate? ___________________________

22) What are your average annual gross sales? $____________

23) What is your debt to FmHA? $______________

To FCS? $______________

To other lenders? $______________

24) Do you have enough money to meet your basic monthly expenses?

YES NO

25) Do you have enough operating money to farm this year?

YES NO MAYBE

26) If your debt was restructured, do you have enough income to meet the terms of your plan?

YES NO MAYBE

27) Are you willing to testify in person or have written testimony submitted on your behalf at a Congressional Hearing?

YES NO MAYBE

NAME (*optional*)____

ADDRESS (*optional*)____

ZIP__________ PHONE#_______________________________________

THANK YOU FOR YOUR TIME AND YOUR [illegible]

CONFIDENTIAL FmHA/FCS BORROWERS SURVEY
- IDAHO RURAL COUNCIL -

Please answer all questions applicable to your situation and return the questionaire in the envelope provided. Feel free to attach extra paper for additional comments. Phone 726-4553, 345-3689 or 888-2984 with questions.

FCS borrowers, please skip questions 1, 2 and 3. FmHA borrowers, skip 4 and 5

1) *(FmHA only.)* Were you sent a debt restructuring packet? [✓ YES] NO
If not, please skip down to question 18.

2) *(FmHA only.)* If yes, did you turn it in? [✓ YES] NO

3) *(FmHA only.)* When did you turn it in? 3/15 1989. (Approx. OK)

4) *(FCS only.)* Did you attempt to restructure FCS debt? [✓ YES] lower interest NO
If not, please skip down to question 18.

5) *(FCS only.)* If yes, when? [✓ BEFORE JANUARY 6, 1988] AFTER JANUARY 6, 1988

6) Did you have help putting together your restructuring proposal or packet?

[✓ YES] NO

7) If yes, from whom?

Friend Lawyer Consultant Accountant [✓ FmHA Employee] FCS Employee

Other (please describe) IRC

8) Did you get it-your restructuring proposal or packet-all completed?

[✓ YES] NO

9) If you did not complete it, why not?

Could not get needed information. Needed assistance.

Told not to by: Lawyer Consultant Accountant FmHA employee

FCS Employee Friend Other (Please describe)

10) Did the lender(s) respond within 60 days?

[✓ FmHA] [✓ YES] NO FCS YES NO

11) Did the lender order an appraisal? [✓ YES] NO

11a) Was the lender's appraisal accurate? YES [✓ NO]

12) Was your proposal accepted? YES NO

13) If not, what was the reason?

(Please describe) FHA want to run my farm plan thru the computer Mar 13, 89. I have not heard back from them 4/25/89

14) If your debt was not restructured, did you appeal? YES NO

15) If you appealed, what was the result? REJECTED GRANTED

CONFIDENTIAL FmHA/FCS BORROWERS SURVEY
- IDAHO RURAL COUNCIL -

Please answer all questions applicable to your situation and return the questionaire in the envelope provided. Feel free to attach extra paper for additional comments. Phone 726-4553, 345-3689 or 886-2984 with questions.

FCS borrowers, please skip questions 1, 2 and 3. FmHA borrowers, skip 4 and 5

****

1) *(FmHA only.)* Were you sent a debt restructuring packet? [✓ YES] NO
If not, please skip down to question 18.

2) *(FmHA only.)* If yes, did you turn it in? [✓ YES] NO

3) *(FmHA only.)* When did you turn it in? Feb 11 1989. (Approx. OK)

4) *(FCS only.)* Did you attempt to restructure FCS debt? YES NO
If not, please skip down to question 18.

5) *(FCS only.)* If yes, when? BEFORE JANUARY 6, 1988 AFTER JANUARY 6, 1988

6) Did you have help putting together your restructuring proposal or packet?

YES [✓ NO]

7) If yes, from whom?

Friend Lawyer Consultant Accountant FmHA Employee FCS Employee

Other (please describe) ______

8) Did you get it—your restructuring proposal or packet—all completed?

[✓ YES] NO

9) If you did not complete it, why not?

Could not get needed information. Needed assistance.

Told not to by: Lawyer Consultant Accountant FmHA employee

FCS Employee Friend Other (Please describe) ______

10) Did the lender(s) respond within 60 days?

FmHA YES [✓ NO] FCS YES NO

11) Did the lender order an appraisal? [✓ YES] NO

11a) Was the lender's appraisal accurate? YES [✓ NO]

12) Was your proposal accepted? YES [✓ NO]

13) If not, what was the reason?
(Please describe) Too much Load and no living expens

14) If your debt was not restructured, did you appeal? YES [✓ NO]

15) If you appealed, what was the result? REJECTED GRANTED

CONFIDENTIAL FmHA/FCS BORROWERS SURVEY
- IDAHO RURAL COUNCIL -

Please answer all questions applicable to your situation and return the questionaire in the envelope provided. Feel free to attach extra paper for additional comments. Phone 726-4553, 345-3689 or 888-2984 with questions.

FCS borrowers, please skip questions 1, 2 and 3. FmHA borrowers, skip 4 and 5.

****

1) *(FmHA only.)* Were you sent a debt restructuring packet? [✓ YES] NO
If not, please skip down to question 18.

2) *(FmHA only.)* If yes, did you turn it in? [✓ YES] NO

3) *(FmHA only.)* When did you turn it in? 12/15 19 89. (Approx. OK)

4) *(FCS only.)* Did you attempt to restructure FCS debt? YES NO
If not, please skip down to question 18.

5) *(FCS only.)* If yes, when? BEFORE JANUARY 6, 1988 AFTER JANUARY 6, 1988

6) Did you have help putting together your restructuring proposal or packet?
YES [✓ NO]

7) If yes, from whom?
Friend Lawyer Consultant Accountant FmHA Employee FCS Employee
Other (please describe) __________

8) Did you get it—your restructuring proposal or packet—all completed?
[✓ YES] NO

9) If you did not complete it, why not?
Could not get needed information. Needed assistance.
Told not to by: Lawyer Consultant Accountant FmHA employee
FCS Employee Friend Other (Please describe) __________

10) Did the lender(s) respond within 60 days?
FmHA YES [✓ NO] FCS YES NO

11) Did the lender order an appraisal? [✓ YES] NO

11a) Was the lender's appraisal accurate? YES NO ?

12) Was your proposal accepted? YES [✓ NO]

13) If not, what was the reason?
(Please describe) Because they feel that they can Sell us Out and get more money than writting off our debt.

14) If your debt was not restructured, did you appeal? YES [✓ NO]

15) If you appealed, what was the result? REJECTED GRANTED

CONFIDENTIAL FmHA/FCS BORROWERS SURVEY
- IDAHO RURAL COUNCIL -

Please answer all questions applicable to your situation and return the questionaire in the envelope provided. Feel free to attach extra paper for additional comments. Phone 726-4553, 345-3689 or 888-2984 with questions.

FCS borrowers, please skip questions 1, 2 and 3. FmHA borrowers, skip 4 and 5

1) *(FmHA only.)* Were you sent a debt restructuring packet? [✓ YES] NO
If not, please skip down to question 18.

2) *(FmHA only.)* If yes, did you turn it in? [✓ YES] NO

3) *(FmHA only.)* When did you turn it in? Jan 2 19 89.(Approx. OK)

4) *(FCS only.)* Did you attempt to restructure FCS debt? YES NO
If not, please skip down to question 18.

5) *(FCS only.)* If yes, when? BEFORE JANUARY 6, 1988 AFTER JANUARY 6, 1988

6) Did you have help putting together your restructuring proposal or packet?

[✓ YES] NO

7) If yes, from whom?

Friend Lawyer Consultant Accountant [✓ FmHA Employee] FCS Employee

Other (please describe) ____________________

8) Did you get it-your restructuring proposal or packet-all completed?

[✓ YES] I think NO

9) If you did not complete it, why not?

Could not get needed information. Needed assistance.

Told not to by: Lawyer Consultant Accountant FmHA employee

FCS Employee Friend Other (Please describe) ____________________

10) Did the lender(s) respond within 60 days?

FmHA YES [✓ NO] FCS YES NO

11) Did the lender order an appraisal? YES NO

11a) Was the lender's appraisal accurate? [✓ YES] NO

12) Was your proposal accepted? [✓ YES] NO

They agreed to [illegible] primary servicing. Their offer was unacceptable.

13) If not, what was the reason?

(Please describe) ____________________

____

14) If your debt was not restructured, did you appeal? YES NO

We will probably appeal. We don't know what we'll do and will have to hire a lawyer

15) If you appealed, what was the result? REJECTED GRANTED

CONFIDENTIAL FmHA/FCS BORROWERS SURVEY
- IDAHO RURAL COUNCIL -

Please answer all questions applicable to your situation and return the questionaire in the envelope provided. Feel free to attach extra paper for additional comments. Phone 726-4553, 345-3689 or 888-2984 with questions.

FCS borrowers, please skip questions 1, 2 and 3. FmHA borrowers, skip 4 and 5

****

1) *(FmHA only.)* Were you sent a debt restructuring packet? [✓ YES] NO
If not, please skip down to question 18.

2) *(FmHA only.)* If yes, did you turn it in? Approximate [✓ YES] NO

3) *(FmHA only.)* When did you turn it in? 1-1 19 89 .(Approx. OK)

4) *(FCS only.)* Did you attempt to restructure FCS debt? YES NO
If not, please skip down to question 18.

5) *(FCS only.)* If yes, when? BEFORE JANUARY 6, 1988 AFTER JANUARY 6, 1988

6) Did you have help putting together your restructuring proposal or packet?

[✓ YES] NO

7) If yes, from whom?

Friend Lawyer Consultant Accountant [✓ FmHA Employee] FCS Employee

Other (please describe) ______

8) Did you get it-your restructuring proposal or packet-all completed?

[✓ YES] NO

9) If you did not complete it, why not?

Could not get needed information. Needed assistance.

Told not to by: Lawyer Consultant Accountant FmHA employee

FCS Employee Friend Other (Please describe) ______

10) Did the lender(s) respond within 60 days?

FmHA YES [✓ NO] FCS YES NO

11) Did the lender order an appraisal? [✓ YES] NO

11a) Was the lender's appraisal accurate? YES NO Don't Know

12) Was your proposal accepted? YES NO Not yet

13) If not, what was the reason?

(Please describe) Not heard from them yet

______

14) If your debt was not restructured, did you appeal? YES NO

15) If you appealed, what was the result? REJECTED GRANTED

CONFIDENTIAL FmHA/FCS BORROWERS SURVEY
- IDAHO RURAL COUNCIL -

Please answer all questions applicable to your situation and return the questionaire in the envelope provided. Feel free to attach extra paper for additional comments. Phone 726-4553, 345-3689 or 888-2984 with questions.

FCS borrowers, please skip questions 1, 2 and 3. FmHA borrowers, skip 4 and 5

****

1) *(FmHA only.)* Were you sent a debt restructuring packet? [✓ YES] NO
If not, please skip down to question 18.

2) *(FmHA only.)* If yes, did you turn it in? ~~[illegible]~~ 15, [✓ YES] Jan 5 1989 NO

3) *(FmHA only.)* When did you turn it in? ~~November~~ 19 88. (Approx. OK)

~~4)~~ *(FCS only.)* Did you attempt to restructure FCS debt? ~~YES~~ NO
If not, please skip down to question 18.

~~5)~~ *(FCS only.)* If yes, when? BEFORE JANUARY 6, 1988 ~~AFTER JANUARY 6, 1988~~

~~6)~~ Did you have help putting together your restructuring proposal or packet?

[✓ YES] IRC [✓ NO]

7) If yes, from whom?

Friend Lawyer Consultant Accountant FmHA Employee FCS Employee

Other (please describe) ______

8) Did you get it-your restructuring proposal or packet-all completed?

[✓ YES] NO

9) If you did not complete it, why not?

Could not get needed information. ~~Needed assistance.~~

Told not to by: Lawyer Consultant ~~Accountant~~ FmHA employee

FCS Employee Friend Other (Please describe) ______

10) Did the lender(s) respond within 60 days?

FmHA YES [✓ NO] Mailed Mar 15 1989 FCS YES NO

11) Did the lender order an appraisal? ~~YES~~ ~~NO~~ Yes

11a) Was the lender's appraisal accurate? [✓ YES] NO

12) Was your proposal accepted? [✓ YES] NO

13) If not, what was the reason?

(Please describe) FmHA wrote of two loans and reduced a third (5% int loan.) FmHA made the proposal and they Look good

14) If your debt was not restructured, did you appeal? ~~YES~~ [✓ NO]

15) If you appealed, what was the result? REJECTED GRANTED

CONFIDENTIAL FmHA/FCS BORROWERS SURVEY
- IDAHO RURAL COUNCIL -

Please answer all questions applicable to your situation and return the questionaire in the envelope provided. Feel free to attach extra paper for additional comments. Phone 726-4553, 345-3689 or 888-2984 with questions.

FCS borrowers, please skip questions 1, 2 and 3. FmHA borrowers, skip 4 and 5.

****

1) *(FmHA only.)* Were you sent a debt restructuring packet? [✓ YES] NO

If not, please skip down to question 18.

2) *(FmHA only.)* If yes, did you turn it in? [✓ YES] NO

3) *(FmHA only.)* When did you turn it in? Au. 19 89 . (Approx. OK)

4) *(FCS only.)* Did you attempt to restructure FCS debt? YES NO

If not, please skip down to question 18.

5) *(FCS only.)* If yes, when? BEFORE JANUARY 6, 1988 AFTER JANUARY 6, 1988

6) Did you have help putting together your restructuring proposal or packet?

YES [✓ NO]

7) If yes, from whom?

Friend Lawyer Consultant Accountant FmHA Employee FCS Employee

Other (please describe) ____

8) Did you get it—your restructuring proposal or packet—all completed?

[✓ YES] NO

9) If you did not complete it, why not?

Could not get needed information. Needed assistance.

Told not to by: Lawyer Consultant Accountant FmHA employee

FCS Employee Friend Other (Please describe) ____

10) Did the lender(s) respond within 60 days?

FmHA [✓ YES] NO FCS YES NO

11) Did the lender order an appraisal? YES [✓ NO]

11a) Was the lender's appraisal accurate? YES NO

12) Was your proposal accepted? YES [✓ NO]

13) If not, what was the reason?

(Please describe) FmHA Officer stated it would not be doing the community a service by working with us

14) If your debt was not restructured, did you appeal? YES NO not yet

15) If you appealed, what was the result? REJECTED GRANTED

survey attachment

Dear Rural Council,

Although surprised that you 'found' us, I'm still appreciative of your interest. I know every farm is different, but it seems some common threads of discontent run through this restructuring.

In our own case, we have reduced the original purchase price of our farm by over $100,000, have had gross sales over $100,000 for five years, and still are 100% leveraged by way of delinquent short term loans. The appraiser FmHA hired then came up with what I feel very strongly is a 'high' appraisal based on 'comparable sales' to speculators and hobby farmers. The consequence results in a very little write down ($7,000) to get to net recovery value which is then more debt than our history and projections can support. My wife is one year post op from breast cancer and the impact on our operation has been significant. We've learned we must maintain a balanced life her health is [illegible] and don't want to 'turbo charge' the farm with overstocking and blue sky projections.

Frankly, our FmHA supervisor has been trying to make the program help us, but must work within the regulations. Our main argument is over the appraisal. She said simply no dairyman can pay the market value for a small dairy in this area. We've had a 20,000# herd average and grow a fat steer in 14 months. We've held up on the production end, its the costs and inputs that have outpaced our selling price. We had hoped for a little relief after a trying year, but it doesn't seem forthcoming. (Neither does our winter wheat after a tough winter)

But it is a beautiful spring morning and I must get to the field. Thank you for your concern.

survey attachment

To Whom it may Concerne
unless the Govt. is realy willing to lower debt. to the actual local land evaluation there is no way a lot of these farms will ever pay out. or even survive!

they only do enough to make it cash flo + stop. then the red tape starts and nothing ever goes to principal.

this year we are approved but not yet funded due to their lack of funds.

Its about Impossible to Jawbone 60 thousand worth of Repairs seed fertilzer and Power demand etc to plant a crop. when they all know you are with FMHA.

tired of Exploitation in Dacks. mr

Survey
attachment

(9)

I have not had one good experience with the F.H.A. The only thing they have ever indicated to me is that I was some sort of a bad risk and didn't deserve any consideration. The forms they wanted me to fill ou are ones which indicate I need money from them to operate. I don't think I want any more to do with this agency than Is absolutly possible.

They sold all my machinery about eight years ago and I have been in limbo ever since. There has never

5E9t

plan to help. That is about as shallow a business philosophy as I have ever experienced. what needs to be done on behalf of farm people who have had to borrow from them is they should have a class action law suit filed against them for non performance of their original purposes, which was to help the agricultural Community.

PREPARED STATEMENT OF SUZANNE ROSE, NATIONAL COORDINATOR, FOOD FOR PEACE CAMPAIGN, WASHINGTON, DC

My name is Suzanne Rose. I am a national coordinator for the Food for Peace Organization which is a movement of farmers and consumers representing farmers from 15 countries for the purpose of supporting policies which will increase world food production. Please see the attached bills for the policies we recommend be implemented to resolve the current food crisis.[1] We are requesting a congressional investigation into the following aspects of the world food crisis.

There must be a full congressional investigation into a secret plan being carried out by officials of the U.S. Department of Agriculture and other agencies of the U.S. Government and complicit international institutions to deliberately cause a catastrophic global food shortage in the years immediately ahead.

The secret plan provides for food to be used as a weapon for enforcing totalitarian control over the populations of most nations, including that of the United States.

The essential objective is to create and manage conditions under which famine, disease, and regional wars would reduce the world population by as much as 2 billion persons by the end of the century. The main targets for depopulation are the nations of Black Africa, Latin America, and Asia. But, millions of poor Americans are also included under the heading of "useless eaters" slated to be eliminated according to the plan.

The very existence of this secret plan is a violation of the U.S. Constitution as well as international law. Actions taken pursuant to the plan are liable to prosecution under the same provisions under which Nazi war criminals were tried and executed at the end of World War II. What we are talking about is deliberate mass murder on a scale far beyond anything the Nazis could ever have dreamed. The fact, that the victims are intended to die of hunger and disease instead of in gas chambers in no way lessens the magnitude of the crime.

We do not make these accusations lightly, but on the basis of overwhelming evidence not only of the existence of the said plan, but also of concrete actions taken to implement it. Specifically, we charge:

1. That the conspiracy to commit genocide through manipulation of the food supply includes the Trilateral Commission, the New York Council on Foreign Relations, Kissinger Associates and related corporate interests, the International Monetary Fund, the World Bank, and other supranational organizations.
2. That officers of the major international food cartels Cargill, Archer Daniels Midland, Unilever, Nestle, Continental, Bunge, etc. are witting accomplices and promoters of the genocide plan.
3. That the plan provides for massive transfer of food from the hunger-stricken poor countries of the Third World to the United States and other industrial nations, in the context of forced repayment of debt under the IMF and at the cost of hundreds of millions of deaths by starvation.
4. That the genocide plan is being coordinated with the Soviet police-state regime, with the included purpose of using the food weapon to enforce joint totalitarian power over the peoples of the world.
5. That a totalitarian "secret government" apparatus has been set up within the United States in order to execute the plan and crush any resistance to it.
6. That this secret government extends into every branch of the Federal and local governments of the United States including the CIA, the FBI and Justice Department, and overlaps strongly with the Federal Emergency Management Agency (FEMA).
7. That the "secret government" arm within the U.S. Department of Agriculture includes Buster Horton, FEMA operative, USDA "Emergency Preparedness Specialist" who, as foreman of the jury in the Alexandria, Virginia trial of Lyndon LaRouche, manipulated that jury for the purposes of silencing LaRouche as the leading opponent of the genocide plan.
8. That the USDA measures to reduce food production capacity have deliberately transformed the United States from a net exporter to a net importer for food.
9. That the USDA deliberately sabotaged action to offset the effects of last summer's drought.
10. That, furthermore, food reserves are being deliberately reduced to the point that the continued drought will lead to food rationing and even starvation, even in the United States this year.
11. That the USDA policy and the Farm Credit System policy as outlined in the Report of the National Commission on Agricultural Finance has been and remains

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[1] The bills are retained in the subcommittee file.

to eliminate the independent farmer from U.S. agriculture and thus place the entirety of food production capabilities into the hands of giant cartels complicit in the genocide plan.

12. That in order to accomplish this, the USDA granted massive subsidies to the major cartels while at the same time promotes removal of producer subsidies and the collapse of farm prices to levels below the real costs of production.

13. That therefore, the bankruptcies since 1980 of an estimated 600,000 family farmers were an intended result of USDA policy. At least half a million more family farms are to be eliminated over the coming 2 years.

14. That as a direct result of this farmland of entire regions has been bought up by foreign investors, posing an additional threat to U.S. national security.

15. That the policy of collapsing producer prices in order to bankrupt independent producers, has been carried out worldwide through GATT as a complicit institution.

16. That pursuant to the secret plan, GATT is demanding the elimination of food reserves and food storage facilities worldwide This would place nations at the mercy of a "world market" entirely controlled by complicit food cartels.

17. That, aside from competitive squabbles, the European Commission and the Cairns group are fully complicit with the USDA in the genocidal policy of collapsing food production.

18. That the ongoing worldwide propaganda campaign against artificial fertilizers, pesticides, and herbicides, carried out with complicity of Government agencies, has the included purpose of collapsing food production potential and creating catastrophic insect plagues.

19. That in particular, the U.S. State Department intervention to prevent the use of the most effective insecticide against locusts, in Africa, was designed to ensure that the current locust plague there would explode out of control.

20. That the deliberate spread of animal and plant diseases is provided for by the plan, including "unconventional viruses" of the type of bovine spongiform encephalopath (BSE) which mysteriously appeared, for the first time in history, in British cattle herds in 1985.

These are only a few of the allegations and facts that must be examined immediately.

The truth will only emerge if a high-level independent investigation is carried out, cutting through the massive screen of lies, blackmail, payoffs, legal manipulation and media propaganda which is currently being deployed to cover up the global government genocide plan.

The police-state-style persecution of Lyndon LaRouche and associated organizations is the clearest proof of the existence of a "secret government" and the nature of its policies. The massive illegal deployment of the USDA, Justice Department, and other government agencies against LaRouche's Food for Peace movement provides a most fruitful line of investigation.

The instances of police raids against farmers in North Dakota, where livestock and equipment are confiscated in a manner intended to create maximum terror and without due process must cease and the agencies who ordered the raids investigated for their connections to the aforementioned agencies of the secret government.

Other fruitful areas for investigation include for example: who ordered the mass leafletting against the December 10 Food for Peace Conference in Chicago? What is the exact role of USDA-FEMA operative Buster Horton in more than 5 years of systematic harassment of LaRouche's farm organizing? What was Horton's broader role, together with FEMA officer Oliver North, in documented operations of the "secret government" to harass and frame LaRouche? How did it happen that Horton turned up as the foreman of the Alexandria jury which convicted LaRouche and his associates last December?

A complete investigation must be launched at once, with subsequent prosecution under national and international law, of all those implicated in the genocide plan. This is the only way to stop this monstrous conspiracy before it is too late, and cleanse the United States and complicit governments and institutions of the criminal insanity which threatens to drag them into an abyss far worse than the Nazi atrocities of World War II.

Thank you.

OVERSIGHT ON THE IMPLEMENTATION OF THE AGRICULTURAL CREDIT ACT OF 1987

With Respect to Borrowers' Rights and Restructuring Provisions

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MONDAY, JUNE 19, 1989

U.S. SENATE,
SUBCOMMITTEE ON AGRICULTURAL CREDIT OF THE
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:04 p.m., in room 332, Russell Senate Office Building, Hon. Kent Conrad (chairman of the subcommittee) presiding.

Present or submitting a statement: Senators Conrad, Boren, Cochran, and Gorton.

STATEMENT OF HON. KENT CONRAD, A U.S. SENATOR FROM NORTH DAKOTA

Senator CONRAD. The hearing before the Subcommittee on Agricultural Credit of the Committee on Agriculture, Nutrition, and Forestry will come to order.

In the interest of time, because of the number of witnesses that we have, I will enter my opening statement into the record and begin with the first witness, Marvin Duncan, the Acting Director of the Farm Credit Administration.

[The prepared statement of Senator Conrad follows:]

PREPARED STATEMENT OF HON. KENT CONRAD, A U.S. SENATOR FROM NORTH DAKOTA

This hearing of the Subcommittee on Agricultural Credit of the Committee on Agriculture, Nutrition, and Forestry will come to order. I want to extend a warm welcome to all in attendance and express my gratitude to the witnesses for being here today.

The purpose of this hearing is to review the implementation of the Agricultural Credit Act of 1987 by the Farm Credit System, particularly the borrowers' rights and restructuring provisions.

Before hearing from the witnesses, I would like to take a few minutes to review the causes of the financial crisis in agriculture, the need for the 1987 act, and some of the questions which farmers and farm groups around the country have raised concerning the Farm Credit System.

As most of you know, in the early 1980's net farm income fell sharply. After adjusting for inflation, net farm income in the first 5 years of the 1980's was lower than net farm income during the 5 worst years of the Great Depression. In fact, net farm income during the first 5 years of the 1980's was lower than any 5-year period since recordkeeping began in 1910.

Much of the decline in net farm income was caused by the economic policies of the Federal Government. Those policies raised real interest rates and the value of the dollar to record levels. The high interest rates raised farm production costs by billions of dollars. The overvalued dollar sharply reduced grain exports and profits. Between 1980 and 1987, the value of feed grain and wheat exports dropped by two-thirds (about $12 billion).

The policies of the 1980's drove commodity prices to the lowest levels (after inflation) in over two decades. The market value of feed grains, food grains, and oilseeds dropped by over 50 percent—over $25 billion—between 1980 and 1987.

Farmers throughout the Nation saw the value of their land drop by 50 percent or more. In my home State, farmers lost nearly 50 percent of their net equity holdings—over $12 billion according to data from the USDA. In other words, in 6 short years, North Dakota farmers lost half of their wealth—an average of $350,000 per farmer.

For the Nation as a whole, the value of farm assets and proprietors' equity dropped by about $300 billion or nearly 30 percent during the same 6-year period.

Only once before in this century have farmers suffered such a sharp and sustained decline in farm income and farm assest values—that time period was the Great Depression.

The effects of the farm financial crisis spread rapidly to farm banks, the Farmers Home Administration, and the Farm Credit System institutions. Literally tens of thousands of farmers were unable to make their loan payments. In addition for many farmers, the value of their assets had fallen below the value of their debts.

In Farm Credit Districts across the country, anywhere from 5 to 20 percent of farmers were delinquent or in trouble on their loans. These farmers did not suddenly become incompetent. Most of them were doing what many experts—loan officers, university professors, and government farm officials—had advised them to do: expand their operations, become more leveraged, and plant fence-row-to-fence-row to keep up with export demand. Unfortunately, the export boom of the 1960's and 1970's became the export bust of the 1980's.

The effects of the farm recession were widespread. Over 850 banks have failed in the 1980's, more banks than had failed during the previous 45 years. For bank lending officers, employees of the Farmers Home Administration, and Farm Credit System institutions it was an extremely difficult time, as they often had to foreclose on life-long friends and neighbors.

By 1985, however, many lenders—both private and public—were beginning to restructure loans when such restructuring would return more to the financial institution than foreclosure. Among Farm Credit System institutions, the St. Paul District was one of the first to restructure loans when the System would benefit.

The purpose of the voluntary restructuring by St. Paul was straight forward; it was designed to put millions of dollars of nonperforming loans back on the books earning money. It was designed to benefit the St. Paul Farm Credit District. The primary criteria for restructuring loans was the self-interest of the district—the loan would be restructured if the benefits to the district were greater or equal to returns from foreclosure.

Restructuring had other benefits for rural communities as well: it reduced the downward pressure on land prices by keeping land off of the market; it keeps many good, hard working farmers and their families in rural communities; and it gives farmers the opportunity to pay their debts to small, local businesses.

Quite frankly, restructuring of loans by the Farm Credit System is both beneficial to their bottom line and a key element in rural revitalization. For these reasons, the successful policies developed by St. Paul were folded into the Agricultural Credit Act.

We all know exactly why the Agricultural Credit Act of 1987 was needed. No one, I repeat, no one was willing to accept the consequences of a default on FCS bonds. Such a default would have been a disaster to farmers because it would have pushed up already high interest rates by as much as 2 full percentage points.

The additional consequence of the failure of the Federal Government to stand behind its implicit guarantee of FCS bonds would have been a much higher rate on Fanny Mae, Freddie Mac, and Sallie Mae bonds. This, in turn, means that home buyers and students will pay higher rates.

No one that I talked with during the preparation of the Agricultural Credit Act of 1987 was willing to risk these consequences.

The financial markets reflected this worsening condition of FCS. In the 1960's and 1970's, FCS bonds traded about 20 basis points (two-tenths of one percent) above U.S. Government Treasury bonds of comparable term. By 1987, FCS bonds were trading at 130 to 135 basis points (1.3-1.35 percentage points) above U.S. Government bonds. That full percentage point increase in the cost of FCS bonds had to be passed onto borrowers.

The effects of the passage of the 1987 act and some improvement in farm conditions has been a substantial decline in the spread between Treasury and FCS bonds. The average spread for 1-year bonds fell to 22 basis points in 1988 and 81 and 56 basis points for 3- and 6-month bonds respectively. In 1989, the spread has dropped even lower. The financial stability provided the System by the 1987 act saves the System hundreds of millions of dollars per year in interest costs. So, even those districts which have not received direct assistance have benefited substantially.

The 1987 legislation was not perfect and, certainly, the farm credit situation is not perfect, but I believe we have made real progress in getting through the farm recession of the 1980's. Like the 1930's, lending institutions have written down or written-off millions of dollars in debt. And, like the 1930's, thousands of farmers have lost their land and thousands of small businesses have lost their businesses. All of us are eager to get on with the future.

We are here today to evaluate and review the implementation of the Agricultural Credit Act of 1987. We want to make the Farm Credit System work better for farmers in the future.

I would like to raise a few issues that farmers and farm representatives have said are of concern to them:

1. Some Districts are treating the "preliminary" applications submitted by farmers as "the application" on which they give only an up or down vote rather than treating it as a starting point for developing a mutually beneficial restructuring.
2. Some Districts are treating appeals as an up or down vote on farmers' "preliminary" applications which have been turned down rather than as an opportunity to determine whether or not a common ground can be attained.
3. We have heard that at least one District does not believe it is required to follow the borrowers' rights and restructuring provisions since they have merged their short- and long-term lending associations.
4. Some farm groups have expressed concern that many of the restructurings are very short term (3 to 5 years) with balloon payments. I am aware that St. Paul is now reviewing and developing workouts of their short-term restructurings. I am proud of St. Paul for taking that progressive attitude and I hope other Districts adopt it.
5. Some farm groups have complained that the farm credit districts do not negotiate with farmers once they file for reorganization under chapter 11 or 12. Others have complained that the only way to get the System to negotiate is to file a chapter 11 or 12. **I hope this hearing will remind everyone that the restructuring provisions of the 1987 act were designed to avoid the need for costly bankruptcy filings.**

While we hear a lot of complaints from around the country, it is clear that Omaha, Wichita, and St. Paul have made a real commitment to restructuring farmers when that is the least cost option. Springfield, Baltimore, and Columbia have had relatively fewer problems than other districts.

Let us proceed with our first witness.

Senator **CONRAD**. Mr. Duncan, welcome. Whichever side you prefer to sit is fine. I want to welcome you to this hearing and tell you the ground rules, as always, will be if you would summarize your statement; the full prepared statement will be entered into the record as if presented. Then we will have time for questions.

Welcome. We appreciate your participation here today.

STATEMENT OF MARVIN R. DUNCAN, ACTING CHAIRMAN, FARM CREDIT ADMINISTRATION, McLEAN, VA, ACCOMPANIED BY NANCY E. LYNCH, ASSOCIATE GENERAL COUNSEL FOR CORPORATE AND ADMINISTRATIVE LAW, FARM CREDIT ADMINISTRATION

Mr. **DUNCAN**. Thank you, Mr. Chairman.

I am Marvin Duncan, the Acting Chairman of the Farm Credit Administration Board. I have held that position since November 11, 1988, when the Chairman resigned to enter the private sector. I have been the sole member of the Board since January 6, 1989, when the third member also resigned.

PRIMARY RESPONSIBILITY OF THE FARM CREDIT ADMINISTRATION

The primary responsibility of the Farm Credit Administration (FCA) is to ensure that the institutions under its jurisdiction operate in compliance with Federal law and regulations and to promote safe and sound banking practices in those institutions.

RATING

To that end, the FCA conducts examinations of all Farm Credit System institutions. Upon completion of an examination, and in addition to an oral and written report to the institution's board of directors, each institution is assigned a rating on a scale of 1 to 5, with 1 being the best and 5 being the worst. The agency uses a CAMEL approach to develop these ratings, which involves evaluating capital, assets, management, earnings, and liquidity. Of 296 institutions examined in 1988, 10 were rated 1; 93 were rated 2; 59 were rated 3; 67 were rated 4; and 67 were rated 5.

SPECIAL EXAMINATIONS

Special examinations of compliance with the borrower rights provisions of the Agricultural Credit Act of 1987 were conducted in St. Louis and Omaha Farm Credit Districts, and examinations with special emphasis on those provisions were conducted in St. Paul, Spokane, and Sacramento Farm Credit Districts. In that regard, the Chief Examiner of the FCA has issued three *Examination Bulletins* to all examination staff, directing that compliance with the borrower rights provisions of the applicable law and FCA regulations be a part of every examination plan and detailing procedures to be followed in implementing those plans.

QUESTIONS THAT HAVE BEEN RAISED BY THE INSTITUTIONS

While our examinations have generally found compliance with the statute in the area of borrower rights, the FCA staff is currently addressing several questions that have been raised by the institutions themselves. Among them are:

First, is a borrower who submits a restructuring plan more than 45 days after being notified that his or her loan is distressed and that it may be a candidate for restructuring entitled to have that plan considered pursuant to the requirements of the act? One court has ruled that by failing to apply for loan restructuring within 45 days of such notification, the borrower "waived any rights to loan restructuring consideration."

Second, can an institution offer a lower interest rate to borrowers as an incentive to have their loans pooled in the secondary market and thereby waive borrower rights?

Third, if a borrower chooses to convert an existing loan to a fixed or adjustable rate loan, is the institution required to provide the same disclosure information that is required for a new loan, including the basis on which interest rates can be adjusted?

Fourth, how many times must a previous owner be offered the right of first refusal to purchase property acquired by an institution through foreclosure or voluntary conveyance?

Fifth, can an institution negotiate a waiver of the right of first refusal during the restructuring process?

And sixth, can an institution offer a borrower a preferential interest rate as an incentive to convert protected stock to at-risk stock?

The Farm Credit Administration staff currently is considering these questions and will respond as quickly as possible.

IMPLEMENTATION OF THE BORROWER RIGHTS PROVISIONS OF THE STATUTE EXTREMELY IMPORTANT

We consider the implementation of the borrower rights provisions of the statute extremely important, particularly the provisions dealing with the restructuring of distressed loans. From the standpoint of a Federal regulator, consideration for loan restructuring is the law. Equally significant, however, is the fact that the successful restructuring of a loan turns a nonearning asset into an earning asset. This may benefit the institution, as well as the borrower.

APPROXIMATELY 10 LAWSUITS REGARDING BORROWER RIGHTS THAT HAVE NAMED THE FCA AS A PARTY

There have been approximately 10 lawsuits regarding borrower rights that have named the FCA as a party. One of these suits was filed before the FCA issued final regulations implementing the statutory requirements, and the balance have been filed after the final regulations were issued. The claims against the FCA generally sought an order from the court declaring that the FCA had not taken the necessary steps to directly restructure the borrower's loan or failed to ensure that the institution acted in accordance with applicable law and regulations. In each case, the FCA filed a Motion to Dismiss on the grounds that: one, the borrower's claims lie against the institution and not the FCA; two, there is no statutory authority for the FCA to grant the redress sought by the borrower; and, three, the FCA's authority to determine an institution's compliance with the restructuring provisions of the statute lies in the FCA's enforcement authorities, which the borrowers had not challenged. In each case where the court has reached a decision, the FCA's motion to dismiss has been granted. In three cases, the motion is currently pending.

RESULT OF ITS EXAMINATIONS

As a result of its examinations, the agency executed 71 enforcement documents with banks and associations under its jurisdiction during the period from January 1, 1988, through May 31, 1989—27 were cease and desist orders and 26 were formal agreements. These enforcement documents covered institutions holding $25 billion of the Farm Credit System's total assets, nearly half of the System's loans and loan-related assets. The FCA also placed conditions of merger on 18 institutions. These conditions of merger were necessary because in each case, one or more merging institutions was operating under an existing enforcement document.

LIQUIDATION—FEDERAL LAND BANK OF JACKSON

There are currently 10 Production Credit Associations, 2 Federal land bank associations and 1 Federal land bank in liquidation. Liquidation of three other Production Credit Associations has been completed and their charters canceled. I would like to update the subcommittee on the largest of the institutions in liquidation, the Federal Land Bank of Jackson.

The Federal Land Bank of Jackson and the Federal Land Bank Association of Jackson, with its 90 service centers in Alabama, Louisiana, and Mississippi were placed in receivership on May 20, 1988.

SIGNIFICANT PROGRESS HAS BEEN MADE REGARDING THE RECEIVERSHIP

Significant progress has been made regarding the receivership. Loans and acquired properties have been reduced by 69 percent and total liabilities by 57 percent. Fixed assets have been substantially reduced. All field offices have been sold or are under contract for sale. The Jackson building, in which the receiver holds a one-third interest, and its fixtures and furnishings, is subject to litigation and will be disposed of at the earliest practicable date. Noninterest operating expenses have been reduced by 38 percent. And the number of employees has been reduced by 43 percent. In short, Mr. Chairman, the major objectives of the receivership that were established by the FCA Board in September of 1988 are on or are ahead of schedule.

SEVERAL STEPS OR CONCERN STILL REMAIN

However, several steps or concern still remain. These include: the second round of sales of the remaining assets, which were offered to Farm Credit institutions on June 15 of this year; second, the auctioning of the remaining acquired property; third, questions about the receivership's collateral position; fourth, the settlement of claims and lawsuits against the receivership; fifth, the disposal of any remaining assets and liabilities of the receiver; and sixth, concluding the receivership and the resolution thereof of its final cost.

I have attached to my prepared testimony the March 31, 1989, status report of the receivership, which lists the six objectives of the receivership, as adopted by the Farm Credit Administration Board, and the progress that has been made on each of those objectives.

COMMENT ON THE FINANCIAL CONDITION AND PERFORMANCE OF THE FARM CREDIT INSTITUTIONS

Let me conclude with a very brief comment on the financial condition and performance of the Farm Credit institutions.

Improvements in farm income, rising land values, stronger agricultural exports, debt reductions, and significant economic and financial assistance strengthened the farm economy in 1988. These developments, together with the implementation of the Agricultural Credit Act of 1987, contributed to the improved performance of many Farm Credit institutions, resulting in the return to overall profitability for the institutions as a whole.

On a cautionary note, however, almost all of the net earnings in 1988 were accounted for by reversals in loan loss provisions. Interest income, however, was large enough to cover interest costs and other expenses by a small margin. In addition, most institutions experienced a stabilization or improvement in the quality of the credit in their portfolios. These favorable trends, however, must continue unimpeded over the next few years if the banks and associations are to achieve a return to financial stability.

DAY-LONG HEARING

Finally, Mr. Chairman, I would like to report that on June 14 we held, at the Farm Credit Administration, a day-long hearing on the prospect of Farm Credit institutions offering additional financially related services. Some 36 witnesses testified.

I will be pleased to respond to any questions the subcommittee may have regarding the regulatory, examination, or enforcement activities of the Farm Credit Administration, and would ask that my testimony, in full, be entered into the record.

Senator CONRAD. That will be done.

[The prepared statement and attachments of Mr. Duncan appear at the conclusion of the hearing.]

Senator CONRAD. Thank you very much for that testimony. We appreciate that. We do have a series of questions.

As you perhaps are aware, we held a hearing earlier this year in North Dakota and dealt with both FmHA and Farm Credit Services. At that time, a series of problems was brought to our attention with respect to Farm Credit System's implementation of the Agricultural Credit Act. One of the things that we heard repeatedly at the hearing, and have heard since at a followup hearing here in Washington, was that there has been inconsistency between the districts in the implementation of the Agricultural Credit Act; a lack of disclosure of criteria for the evaluation of restructuring applications and the formula for calculations and, often, appraisals. I think those are the most frequent comments that we heard.

Could you respond to those notions that people have that we've heard repeatedly, that there is really a lack of policy nationwide on restructuring, a lack of disclosure to borrowers and the lack of disclosure of criteria for restructuring?

Mr. DUNCAN. Yes, Mr. Chairman. Let me begin by noting that over the course of the past year we have received a number of letters from borrowers and interest groups around the country regarding the implementation of borrower rights. Where we determined from those letters that there was a pattern of problem within a district, I have been in personal contact with the senior management of each of those districts to talk with them about the problems that appeared to represent a pattern.

Having said that, let me then go more directly to a response to your question. We have, in each of our examinations, examined institutions for compliance, of procedures in place to comply with borrower rights aspects of the legislation. On balance, we have not discovered serious patterns of violations of law or regulations in the borrower rights area.

What we have discovered is that there have been some problems; that while they do not represent violations of law or regulations, are of the sort that you have referenced, Mr. Chairman. For example, the independent appraisals sought by the borrower and brought to the institution is often a point of some frustration for the borrower because the institution is under no statutory or regulatory responsibility to accept the independent appraisal.

Additionally, we have found a couple of other problems that have cropped up. We have discovered that there have been some occasions in which a borrower would meet with his lending officer or her lending officer, discover that the credit action or requested credit action was denied and when the borrower asked if he or she could meet with the Review Committee, would discover that the Review Committee was meeting very shortly thereafter, perhaps 1 hour or 2 hours, and that it might be a considerable period of time before another such meeting were held, and the borrowers sometimes felt that they were then going into those meetings without adequate preparation on their part.

The third issue that you had raised, that of whether the borrower in all cases understood the reasons why a credit request was being denied or a restructuring request denied. There appears to have been some situations in which there was not as clear an indication as perhaps appropriate given to that borrower.

On balance, what I am indicating, Mr. Chairman, is that we have not been able to determine violations of statute or regulations in our examination work but we do believe that there have been, in some cases, patterns in which the spirit of the act was not fully complied with. I draw your attention back to my earlier comment that where we discovered those patterns, I have been in conversation with the senior officers of each of those institutions, reminding them that we believe it is incumbent upon those institutions to operate within the statute and regulation and within the spirit of the act.

We do believe that the situation is becoming less troublesome, based on the letters that we have received from borrowers and so forth. We believe that institutions are becoming more diligent in complying with the spirit of the act.

Finally, let me point out that these are individually chartered institutions with individually elected boards of directors, and it perhaps should not surprise you that there is not a complete convergence or congruity of implementation of borrower rights across every institution in this Farm Credit System.

Senator CONRAD. Have you brought any enforcement actions to bring congruity?

Mr. DUNCAN. At this point, we have not because we have not discovered a basis, upon our examinations, for doing so. What we have discovered is not, in our judgment, lack of compliance with the law or regulations but problems regarding the implementation according to what you and I would call the spirit of the act, and that does not serve, unfortunately, as a basis for enforcement action.

Senator CONRAD. Has FCA done any comparative analysis across the districts on the implementation of the Agricultural Act? Have you done a formal analysis as to how various districts are implementing the Agricultural Credit Act?

Mr. DUNCAN. As we do our examinations of each institution, the policies and procedures in place in that institution for implementing the borrower rights aspects of the statute are part of the examination. As I had indicated earlier, we have not found significant indication of problems with the policies and procedures that are in place in the institutions we have examined. We have found, based on the letters we have received from borrowers, special interest groups and so forth, some apparent problems with the implementation of the spirit of the act.

Senator CONRAD. Well, I have seen earlier numbers from the various districts that disclose certain results—how much restructuring, how much of various other kinds of actions are needed. There are dramatic differences, district-to-district. From what we have been told, there is really no consistency district-to-district in terms of the handling of these cases. FCA has authority here, certainly, under the Agricultural Credit Act, to bring action against those who are not proceeding in harmony with the act, and you have indicated there have been no enforcement actions brought.

Have there been other actions brought by the FCA to ensure that there is a consistent pattern of conduct by the various elements?

Mr. DUNCAN. Mr. Chairman, in each institution that we examine we, as part of our examination, determine the policies and procedures that that institution has in place to implement the borrower rights provisions of the act and we have not, at this point, found significant problems with those policies and procedures. We have not found a basis at this point on which we can take enforcement action and sustain that enforcement action solely with regard to borrower rights.

We have learned of some problems with regard to the implementation of the spirit of the act, and I——

Senator CONRAD. What have you done along those lines?

Mr. DUNCAN. In each of those instances where there was a pattern that appeared to be resulting, based on our letters and communications from interest groups and farmers, I have been in conversation with the senior management of those institutions, reminding them of their responsibilities in this regard and urging them to comply with the spirit of the act, as well as with the law and the regulations.

Senator CONRAD. Let me ask you this. Has FCA made available to the districts guidelines for a consistent policy?

Mr. DUNCAN. We have, of course, the regulations that we had established for the implementation of the borrower rights provisions of the statute. Yes, those are available. We have some book letters out to the institutions in that regard, as well.

Senator CONRAD. Is one part of that that a full disclosure be made to the borrower of criteria for evaluation, a formula for calculations on restructuring?

Mr. DUNCAN. That is not a requirement of the statute or the law, as I recall, but we have certainly urged that the institutions do that. As a matter of fact, in my conversations the senior management of institutions where there appeared to be a pattern of problems, I have reminded them that there ought to be an indication to the borrower of the basis on which a decision was made.

Senator **Conrad**. Aren't the regulations that have been issued really just a rehash of the law? I mean aren't they just a copy of the law that's been provided to the member institutions and that there's really no detail, there's no additional guidelines on how restructuring ought to be handled, on what kind of disclosure ought to be made to borrowers? Isn't that what we have in reality?

Mr. **Duncan**. I don't think that I would characterize them in that way, Mr. Chairman. Different people would characterize them differently, I suspect. We believed when we put them in place that they gave sufficient guidance to the institutions to implement the borrower rights aspects of the statute.

However, I remind you of my testimony in which I had noted some questions that have been raised, and the agency is currently in the process, at the staff level, of evaluating those questions. Where those questions appear to require a regulatory response, I can assure you that the agency will not be hesitant to do so.

Senator **Conrad**. Let me ask you this. Do you agree that there ought to be a disclosure to a borrower regarding the basis on which borrowers will be accepted or rejected for restructuring; that there ought to be a set of criteria for how these determinations will be made that's transparent, that's evident, that's understandable?

Mr. **Duncan**. Mr. Chairman, I think that there is at this juncture, for the most part, sufficient guidance in the law and in the regulation in that regard, and that what we really are talking about is the spirit of the implementation and the level of communication quality by that individual—between that individual loan officer and the borrower.

Senator **Conrad**. In the regulations that have been sent out by FCA, is it clear that there is to be disclosure to the borrower of the criteria by which his eligibility for restructuring is determined?

Mr. **Duncan**. I'm going to call on one of my associates, my Associate General Counsel.

Nancy, would you respond to that question in a more detailed fashion?

Ms. **Lynch**. Yes, Mr. Duncan.

Section 614.4518 of the FCA regulations provides that a borrower, if they are denied restructuring, must be provided reasons for the denial and any critical assumptions on relative information upon which those reasons are based, provided that any confidential information in the institution need not be disclosed.

I think at the time the agency was considering these regulations, we tried to balance the interests of the borrower against the interest of the institution; and that certainly, as you have indicated, the borrower has a right to know the basis on which their application has been denied, but that the institution has valid concerns about not releasing all of their internal calculations to borrowers, not necessarily those specific to their loan but that their internal operating procedures need not always be revealed.

Senator **Conrad**. Well, let me just say to you that what you have read to me is an after-the-fact disclosure. The disclosure you have just read to me occurs after you have been turned down. At that time you have a right to be told why you have been turned down. What I am asking goes beyond that.

What I am asking is whether or not a potential borrower is provided, in the regulations, the right to an indication of the criteria for determining who qualifies for restructuring?

Ms. **Lynch**. I don't think that they necessarily know, going into the negotiations over whether their loan would be restructured, what the bottom-line figure of——

Senator **Conrad**. No, that's not what I'm asking. I'm not asking, yes or no, that you be told that you qualify or don't qualify. Is there a set of criteria that exists, that a person could review, to determine what is the methodology that is used to determine whether they are allowed to restructure or not? Is there a consistent formula? Is there a consistent set of criteria that is provided that is the basis for decisionmaking on who gets restructured and who does not?

Ms. **Lynch**. I think the answer to your question would have to be no, but I am not sure it is possible for those institutions to say on every loan that all of those—to enumerate all the criteria that would go into it. I think that is part of the difficulty that the agency had in trying to promulgate these regulations, is that some of these factors that would be considered in deciding whether the possible restructuring was less than the cost of foreclosure, which is what the statute requires, can't be quantified as applicable to every loan that is out there.

There are certain factors that certainly would be considered; but what you are talking about, I think, is a negotiation and if the bank or the Production Credit Association or whatever were required to lay out on the table every single factor, I think what you would have is perhaps no negotiation.

Senator **Conrad**. Let me just say that in the absence of a policy, what you have is chaos. Unless you have some clear guidelines to the individual institutions as to what the criteria for decisionmaking are, what you have are hundreds of different decisionmakers with no clear criteria, no clear basis for making the decision and, as a result, tremendous inconsistency. That is precisely the complaint that we are hearing over and over and over, that there's no clear policy.

Mr. **Duncan**. Mr. Chairman, at this stage, however, in the context of the statute that is on the books, that is a decision by the Farm Credit institution and its implementation of the borrower rights provisions and the regulations are in the hands of the directors, the farmer-elected directors of that institution and its management.

I would submit that a good bit of the problems in this—as I've indicated, I am aware of some problems with regard to the spirit of the act—a good bit of these problems seem to me to be of the nature that can be resolved by good faith discussion between the institution and its borrower.

Senator **Conrad**. Well, let me say I am in full agreement that you must have good faith on both sides of these transactions. But I must say to you, when you're running a national operation and you're dealing with people in many institutions, that the absence of some clear criteria and guidelines as to what are going to be the factors that are going to lead to determinations on how people are treated is to leave open the opportunity for tremendous differences in how people are treated across the country. I'm afraid, very much, that that is what is happening.

Very frankly, I think this type of policy leaves FCS open to very strong criticism that you are not providing the kind of leadership and management that would lead people who are similarly situated to be treated equally.

Mr. DUNCAN. Mr. Chairman, I would submit that these are individually chartered institutions and they, of course, are the ones who have the responsibility for implementing the borrower rights. It may well be that their implementation opens them to some criticism, but it is those individual institutions that become open to criticism. The FCA, the financial regulator, is constrained by the statute. We cannot go beyond the statute, Mr. Chairman.

Senator CONRAD. Well, doesn't the statute, in section 414(a), specifically give FCA the authority to enforce restructuring decisions?

Mr. DUNCAN. I don't have the statute in front of me; I'm sorry.

Senator CONRAD. I think that is the case. I think that in 414(a), FCA is given that authority for a purpose. What I hear here today suggests to me that this obligation is not being pursued, and that is troubling.

I must say to you, and I say it respectfully and I say it very seriously, that we have heard an awful lot of complaints from across the country of inconsistency, of the lack of disclosure, of a lack of transparency as to how the decisions are made. Although there are still problems inherent in the FmHA DALR$ program, FmHA has through the DALR$ program, which there is lots of problems with—I don't want to mislead you for a moment on that—has done an awful lot of work to develop a consistent way of dealing with these questions. I really think the Farm Credit System has to think very carefully about pursuing that kind of consistent policy so that people who are out there and similarly situated get similar treatment.

Mr. DUNCAN. Mr. Chairman, I think that is probably a question that more appropriately would be directed to the Farm Credit System witnesses that will be on the stand this afternoon.

Senator CONRAD. Well, I raise it here because FCA does have this authority and, it would seem to me, ought to be exercising it in its role as a regulator.

Let me pursue another question, and I beg the indulgence of my colleagues—we will go to opening statements very quickly—if I might just pursue one other question.

That is, there are some who question the legal posture that we are in today with having only one member of the board. Perhaps we ought to give you an opportunity to address that question. We have had lawyers suggest to us that FCA decisions, given the fact there is only one member of the board, are open to legal challenge. Perhaps you would like to respond on the record to those assertions.

Mr. DUNCAN. Surely. Let me do so, Mr. Chairman. During the time that the FCA Board does not have a quorum in place, it, of course, cannot create new policy and new regulations. That is to say that I cannot create new policy and new regulations, and I have been very careful not to do so. However, under a delegation from the FCA Board, when there was a quorum in place, I do have a delegation to me that permits me to carry out the policies of that Board and the policies that were put in place by that Board and to enforce the regulations that are in place.

Senator CONRAD. So, for example, when we're dealing with the merger of Jackson in Texas, what is your view of the legal posture of FCA in that circumstance?

Mr. DUNCAN. We have made a careful analysis of the statute and it is our judgment that the statute requires that the FICB of Jackson merge with the Farm Credit Bank of Texas, just as the FICB of any other district merged under a required merger with the Federal land bank in that district.

At the time that the merger, the final date for mergers—I shouldn't say the final date—I should say the date for mergers to become effective in 1988 occurred, there was not a partner for the FICB of Jackson. However, with the Board action of FCA to grant an extension of the long-term lending authority of the Texas Farm Credit Bank to include the States of Louisiana, Mississippi and Alabama upon the completion of the asset sale that was made earlier this year and completed on February 10 of this year, the Jackson FICB then did have a merger partner. They have been accorded the same period of time within which to discuss and come to a merger with Texas, as any other FICB and, for that matter, any other FLB.

Senator CONRAD. As I understand it, you are using the authority in section 410 as the reason for requiring the merger; is that correct?

Mr. DUNCAN. That is correct.

Senator CONRAD. Some assert that section 410 only requires intradistrict mergers. This would appear to be an interdistrict merger. What is your analysis?

Mr. DUNCAN. I beg to differ with you, Mr. Chairman. As of the 10th of February of this year, the long-term lending authority for the Texas Farm Credit Bank was expanded by the Farm Credit Board to include the States of Louisiana, Mississippi and Alabama. Therefore, as of that point, there was a merger partner within that district.

Senator CONRAD. All right.

Mr. DUNCAN. And it is our interpretation of the statute, and not a decision by me as Acting Chairman, but rather our interpretation of the statute that is the basis for our indicating to those two institutions that they have a responsibility, under the statute, to craft a merger. Moreover, it is my understanding that those institutions are well along in crafting such a merger.

Senator CONRAD. Well, your interpretation of section 410 would appear to be requiring the merger of banks that as of January 6, 1988, were in different districts, and we specifically rejected forced consolidation of districts when we rejected the Stenholm amendment, didn't we?

Mr. DUNCAN. You did that but you did not provide an FICB and an FLB the opportunity to either shop for a merger partner or to take the proposed merger to its stockholders. To the contrary, you required a merger. This occurred in every other district and would have occurred in the Jackson District had there been at that point a merger partner.

Now there are some who would argue, "Well, maybe that institution should have been merged with the Jackson Federal Land Bank prior to the placement of Jackson receivership." That, of course, would have resulted in the combined institution being in receivership.

Senator CONRAD. How far would you extend this logic? I mean would this allow you to extend the territory of Omaha to include St. Paul?

Mr. DUNCAN. The agency has the authority, under a situation in which there is a receivership and an institution that is going out of existence, to make changes in the boundary of the territory.

Senator CONRAD. So you see this as, in that situation, having no limits?

Mr. DUNCAN. I think I would respectfully disagree with that characterization, Mr. Chairman. I think I understand where you're going with this and I reject the direction in which you are taking that. That is a mischaracterization of what the agency's interpretation is in this circumstance. The agency's interpretation of the statute is that the FICB's and the Federal land banks were required, under statute, to merge. As of February 10 of this year, the FICB of Jackson was in the Texas Farm Credit District for purposes of long-term lending and, therefore, the FICB of Jackson had a merger partner and that merger partner was the Texas Farm Credit Bank.

Senator CONRAD. All right. Well, you know this is an area of some considerable controversy.

Mr. DUNCAN. Yes, yes.

Senator CONRAD. And some strong differences of opinion. You know the regional feelings on this matter.

Mr. DUNCAN. Some concern; I understand that. When I hired on to be a Federal financial regulator, I never expected that every decision would be met with pleasure by everyone involved. The regulator is an umpire and must be an evenhanded umpire. I believe, in this case, the regulator is being that evenhanded, prudent and judicious regulator.

Let me reiterate that the institutions in question themselves are far along in the process of crafting a merger. Now, I'm aware that there are some interests that would suggest that the Jackson FICB ought to be able to shop for a merger partner. I ask you, for a moment, to think about the circumstances that ensue from that kind of an interpretation. Remember that there were many FICB's in the Farm Credit System that were themselves quite healthy and were required by statute to merge with weak and, in some cases, sick Federal land banks.

If the Jackson FICB were to have been granted the opportunity to shop for a merger partner and/or to take a merger proposal to its stockholders, does it not follow that the previous owners of PCA's, themselves healthy, that had been merged without the option of stockholder vote or the opportunity to shop, would they not have some questions about the validity in their case?

I would submit to you that pursuing your line of reasoning to its logical conclusion might well result in a significant number of legal actions across the Farm Credit System as institutions choose to shop for preferred partners. I don't think that's what the statute had in mind. Our interpretation of the statute is that the two institutions in question have a responsibility, under that statute, to create a merger. My understanding is that they are well along in the process of doing so.

I have spoken to the CEO's of both institutions very recently and I have seen what is purported to be a merger schedule. I am aware that there are some limited differences between the two institutions as they are discussing this merger. That's not surprising.

Someone has suggested the possibility of an arbitrator to arbitrate some of the business issues that turn out to be sticky issues between the two institutions. We have indicated to both parties that we would not oppose an arbitrator to deal with some of the sticky business issues related to that merger. We would, however, not relinquish our regulatory and enforcement responsibilities and you, of course, would not expect us to do so.

Senator CONRAD. Now, let me say to you that we may well have a series of legal actions whichever direction is taken. I think everyone who is part of this understands that, and that there is controversy as to not only this merger and the way it's being handled but also the whole receivership as it surrounds the district that is in receivership. We probably won't resolve those differences here today but at least it's healthy to air them.

I don't want to impose on my colleagues' time any further.

Mr. DUNCAN. Mr. Chairman, I would appreciate responding to your concern by pointing out that the Farm Credit Bank of Texas and the Jackson FICB are receiving the very same consideration in terms of timing, requirements, responsibilities and opportunities in crafting their merger that was true for the FICB's and Federal land banks elsewhere in the Farm Credit System—the same considerations, no special considerations.

Senator CONRAD. Is there 45 days there that is provided, the terms of notice?

Mr. DUNCAN. We have asked them to provide a proposal by the 29th of June, I believe, and that timeframe is identical to the timeframe that was used for the other FICB's and FLB's.

Senator CONRAD. Do any of my colleagues have opening statements or questions? I think we should go in the order in which people arrived. Thad, I think you were the first.

Senator COCHRAN. Mr. Chairman, I don't have an opening statement. I was going to ask a couple of questions on the subject that you brought up now, and I won't be long.

Senator CONRAD. That's fine.

Senator COCHRAN. I'm curious as to what happens under the statute, as you interpret it, if the FICB and the Federal land bank cannot reach a merger agreement. Do you actually merge for them? Do you actually end up making those decisions that they cannot voluntarily agree on?

Mr. DUNCAN. Yes, Mr. Senator. We then are brought in, under the terms of the statute, to create the merger proposal and we would work with them in creating such. We have indicated to both institutions that it is not our expectation that it will be necessary to do that. We believe that the gentlemen and women of good intentions will be able to resolve questions and problems.

As I have indicated, we have reason to believe—I, as recently as last week had conversations with the presidents of both institutions—that merger discussions are well along, that they are progressing rather favorably.

Senator COCHRAN. Has it been your experience, in monitoring the other discussions and negotiations and merger agreements in the other areas between FICB institutions and Federal land banks, that these agreements have been developed by the negotiators themselves, or has the FCA had to come in and actually force mergers in some instances?

Mr. DUNCAN. Mr. Senator, the FCA has not had to come in to force mergers or to craft mergers or to work with the institutions in crafting mergers. Quite frankly, I don't expect that will be necessary in this case.

Senator COCHRAN. In the notice to institutions around the country for bids, when the Federal Land Bank of Jackson was moving into receivership and there was advertisement of that and invitation to bid on the assets and loans, was this the fact that whoever bought the assets or the loans of the Federal Land Bank of Jackson would end up being in the position of the merger partner of the FICB of Jackson?

Mr. DUNCAN. The Farm Credit Administration Board very carefully separated the issue of the sale of the assets from the determination on the long-term lending authority. Those were two separate actions by the Board. The Board could not anticipate, in advance of receiving the bids, what the result of those bids would be. The result turned out to be that the Texas Farm Credit Bank outbid all the other bidders, and their bid was a substantially better bid. They bid on all the assets that were offered for sale in that offering. The Board at that time granted the approval to the receiver to proceed with the consummation of the sale to the Texas Farm Credit Bank.

We then looked at the Texas Farm Credit Bank, its stability and its proposals for bringing long-term lending back to the three States of the former Jackson FLB and returning stable, constructive farm credit on a long-term basis, and concluded that the interests of the farmers and ranchers of that district would be well served by granting the long-term lending authority in those three States to the Texas Farm Credit Bank.

Senator COCHRAN. Do you read the statute as requiring only one application for long-term lending authority in an area be granted? Is that a requirement?

Mr. DUNCAN. The question being whether or not there should be duplicate lending——

Senator COCHRAN. Or more than one.

Mr. DUNCAN. Some people have suggested that the institution—FICB, that is—ought to be able to shop and select a merger partner. The practical reality of that, of course, is that there would duplicate farm credit services, long and short term, across those three States.

Senator COCHRAN. Do you ~~read~~ the statute as requiring a monopoly, in effect, for long-term lending authority? Is that your understanding of the requirement of the statute?

Mr. DUNCAN. My interpretation of the statute is that it does not envision, at this juncture, duplicate or multiple lending operations across the district. Now it is clear that at the margin there are as the result of the special window of opportunity that was permitted in the statute in some of the mergers that are going on between land bank associations and PCA's to form ACA's, some areas where an institution may find itself adversely affected competitively.

That is, a land bank association may find itself, or a PCA may find itself competing against an institution that is able to bring one-stop credit services across the maturity range. Where that occurs, and at the margin, the Farm Credit Administration Board has taken action to create an opportunity to level the playing field, as it were; to permit the adversely impacted institution to make a decision—as to whether it wished to convert itself, in effect, to an ACA.

There have been some limited circumstances in which that has occurred but the Farm Credit Administration Board has not taken a policy position by its interpretation of the statute that duplicate and multiple credit delivery systems be created across entire Farm Credit districts.

Senator COCHRAN. As I understand your answer then, if for instance, a production credit association were to apply for long-term lending authority in an area where you had already granted that authority to some other entity, such as a Federal land bank, you don't envision any circumstance under which that application could be considered; is that correct?

Mr. DUNCAN. The policy position of the FCA at this point is that where an ACA is formed and its territory happens to overlap in part a PCA or an FLBA so that that institution, either short- or long-term lender, would find itself at a competitive disadvantage to an ACA able to lend across the maturity spectrum, then there the FCA would consider that FLBA or PCA's application to, in effect, convert itself to an ACA.

Senator COCHRAN. Mr. Chairman, I wish I could stay here and ask questions for some time but I know other Senators are here. I appreciate the indulgence of other Senators and the chairman. Thank you.

Senator CONRAD. Without objection, we will keep the record open for the submission of additional questions. We will leave it open for a week.

Senator Boschwitz has questions for the record.[1]

Is that sufficient?

Mr. DUNCAN. Absolutely. We would be pleased to respond.

Mr. Chairman and Mr. Senator, may I say that we are of the firm belief that the course of action that is being pursued with regard to the FICB in Jackson and the Farm Credit Bank in Texas is one that will return at the earliest possible time, stable, constructive, locally controlled, borrower controlled, agricultural credit services through the Farm Credit System institutions, to the farmers and ranchers in the States of Louisiana, Mississippi, and Alabama, and that is a very important consideration to the agency.

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[1] See pages 736 to 738 for the questions and responses.

Senator CONRAD. It is to us, too. We appreciate you being here to help us understand the interpretation of the statute and why the actions are being taken as they are by the FCA. Thank you.

Mr. DUNCAN. Thank you, Mr. Senator.

Senator BOREN [presiding]. In the absence of the chairman, I wanted to pursue this one point and thank Senator Gorton for letting me do that.

Going back to the specific point that Senator Cochran raised about notice, I didn't hear your answer to that specifically as to whether or not the Farm Credit Administration, when you let out bids on the loans, the FLB of Jackson, the long-term lending authority, did you disclose this? Was there written notice to the FICB of Jackson that they would be included in this? In other words, was there any notice to them that their options--because under your legal theory, which I have to say I disagree with, having presiding over the writing of this provision.

Section 410 only applies to intradistrict mergers. That's all it was ever meant to be, and we had quite a long discussion. It applies to the Federal land bank and the Federal Intermediate Credit Bank of each district shall merge. That's an intradistrict merger, to quote the law, section 410(a).

Now, we had a long discussion about the difference between a merger within a district and outside a district. When we got over to talking about mergers between districts, we finally yielded on the point of not requiring local approval and vote of the stockholders and members in terms of the intradistrict merger. But we expressly provided, under section 712, that when there was a merger of banks in other districts, the respective boards of directors of the banks involved would have to approve it. A majority vote of the stockholders of each bank voting in person or by proxy at the duly authorized stockholders meeting of each association would have to approve it, and so on.

Now since this is an interdistrict merger, your theory is, well, the FICB all of a sudden lost all of its rights in terms of the members to approve it, when you merged Jackson and Texas. My question is, if that is the theory under which you are operating, did you provide specific written notice to the FICB of Jackson that your action and that when you were taking bids on, who was going to take over the long-term lending authority in Jackson of the FCB? Did you specifically, in writing and what did the notice say, inform everyone involved, including the FICB in Jackson, that they then were going to be foreclosed in terms of their rights on down the line?

Mr. DUNCAN. I don't recall at this moment, Mr. Senator, without going back to the documents involved the specific language, but I will be happy to provide that language in the documents.

Senator BOREN. That there was notice, there was specific notice that said to them, "We put you on notice"?

Mr. DUNCAN. Senator, I am telling you that I do not recall the specific language at this point but I will provide it.

Senator BOREN. No. Let me go back to the question, get an answer to the question. I am not asking you to quote the specific language. Was there specific language that put the FICB on notice that their rights were being foreclosed in terms of the bid on the long-term lending authority?

Mr. DUNCAN. I would have to go back to the documents to satisfy myself on that, Mr. Senator, and I will be happy to do that.

Senator BOREN. You don't know whether there was such notice given?

Mr. DUNCAN. I do not recall with sufficient specificity to respond with the level of knowledge that I think you are asking for.

Senator BOREN. I think it's very important from the legal authority because if you did not give them specific notice that their rights were being foreclosed because, you see—and we debated this at length. Let me say it is a matter of legislative history, in case anyone does decide to file a lawsuit on you on this, and I think you are absolutely wrong in your reading of the law. We spent hours, hundreds of hours in here in terms of the markup.

I would urge you to follow the law. Section 410 was never envisioned as applying to mergers between districts, only inside districts. Nowhere does it say, "between districts." It is talking about within districts. So I don't think you have any right to apply section 410, and you certainly wouldn't have the right to apply it without giving notice to the FICB, to allow them to participate in this in a way that would preserve their rights because I think they clearly fall under subtitle D and section 7.12 when we talk about the majority vote of the stockholders.

So I would urge you to go back and research that because if you didn't give specific notice that put them on notice and other banks on notice—of course, there's an interest now between Jackson in Wichita and having the right to at least consider a competing merger proposal with the FICB. I think even if you had given specific notice, I don't know if you had the right to do that. But if you didn't give specific notice, I think clearly you would be in violation of the law.

Mr. DUNCAN. Mr. Chairman, I think that the section of the act you are referring to relates to mergers among like institutions.

Senator BOREN. Yes.

Mr. DUNCAN. And of course, the FICB in Jackson and the Farm Credit Bank of Texas are not like institutions. But with regard to the question——

Senator BOREN. Well, they are certainly not intradistrict mergers, you see.

Mr. DUNCAN. From the perspective of the long-term lending authority of the Texas Farm Credit District under the statute, the FCA exercised its appropriate responsibility in extending the lending authority of the Texas Farm Credit Bank to include the States of Louisiana, Mississippi, and Alabama. The Federal Land Bank of Jackson in receivership was not merged with the Texas Farm Credit Bank. That is an institution that is in receivership and will be liquidated—well along the way toward being liquidated and once the receivership is completed, it will cease to exist, will go out of existence.

Senator BOREN. I realize we're dealing here with a fairly unique situation in that we did not specifically provide for what happens when we have an institution in receivership. But it seems to me that the legal interpretation, however, is faulty because the most essential point that we were looking at is that when there was a merger within the district, where we were merging FICB's and the Federal land banks, we determined, after a lot of discussion, that that would not at that point be a matter of choice, that would occur. But whenever there was to be a merger between districts, that those mergers between districts should be a matter of choice and should, therefore, require the approval of the boards of directors and a majority vote of the stockholders of each bank.

So I would just say that I think you have received faulty legal advice. Now I realize lawyers have the right to interpret what they think we meant. That's the reason I want to state in the record explicitly what we meant and to say explicitly that your lawyers have given you incorrect advice.

Now, I have to say that those of us in Congress that labor along in trying to write the law get a little impatient when people tell us what we meant. We know what we meant. I am simply putting into the record exactly what we meant. We meant that when there was a merger between districts, and this case would more clearly fall into a merger between districts, that there should have to be a vote. So I would urge you to look at this again.

I think you should allow others to look at it; at the very least, other districts to have information and submit bids. At the very least, I think you should require a majority vote of the stockholders of the Jackson FICB to approve any merger with Texas. And if you don't allow them to vote on whether or not to merge, I think you have very clearly violated the law and that the members of the Jackson FICB would have a right to file a lawsuit to prevent that from happening. I state that as, I suppose, the principal author of the legislation, that this clearly flies in the face of our intent.

Mr. DUNCAN. Mr. Chairman and Mr. Senator, I respect your views, of course, but I must say at this point that the Farm Credit institutions have engaged with entirely too much frequency in litigation, and litigation that in these circumstances is paid for by the farmers and ranchers.

Senator BOREN. Wait a minute. When the regulator misapplies the law, that is the cause of litigation. If the regulator applies the law properly, as the Congress wrote it, then there shouldn't be as much litigation. I would just again urge you to take another look at this and if there is any consideration given to the intent of Congress, which I would assume that there would be if this matter is litigated in court, to say that I think you would be asking for litigation because you will be flying in the face of the intent of Congress if you do not allow the stockholders of the Jackson District.

You know, I understand that—is it the new South—it may be that the Northwest—you might even look into this situation if you're trying to negotiate a settlement, that I believe Northwest Louisiana might want to affiliate with Texas. But I think that then, for South, Jackson should be able to determine whether they want to go with Texas or with Wichita in this matter.

Mr. DUNCAN. You may wish to query representatives from some of the district institutions that are here this afternoon. I suspect you will find, as I have found as recently as conversations with the presidents of the two banks last week, that the merger discussions are well along and we have reason to believe that they will be able to produce a merger proposal.

Senator BOREN. Is that because they desire to do so? In other words, that's their first choice, that they wish to proceed? I have no quarrel with it. You know, in other words, if the stockholders and the directors voluntarily, of the Jackson FICB wish to merge with Texas and don't want to merge with Wichita or with anybody else, I have no objection to them doing that. The law says they shall have the right to decide that and if they decide that, they should. What I'm saying is the law doesn't give you the right to decide that; it gives the stockholders and the board of directors of the Jackson FICB the right to decide that.

Mr. DUNCAN. Mr. Senator, I, as Acting Chairman, am not deciding that. It is an interpretation of the statute that we have made, and we have given careful consideration to that——

Senator BOREN. By whom?

Mr. DUNCAN. We have the advice of our General Counsel and——

Senator BOREN. So the General Counsel, when we have one member of the Board here, now it's not even the Chairman of the Board that is not following congressional intent, it's the General Counsel who's not—I don't know. I don't understand where in the Constitution it gives authority to the General Counsel to make law. We made the law and we expect you to live by the law. So, I would urge you to go back, look to see, did you preserve the rights of the Jackson FICB by specifically and explicitly letting them know that this was interpretation of the law and, at that time, if they did not go out to see other merger partners who would bid on the long-term loans, that they were going to be foreclosed from then dealing with the short-term loans?

Because if you didn't give them notice, you clearly put them into a box without even telling them that they were not going to have an opportunity later on. You foreclosed their rights under the law in that district to allow them to determine, the stockholders and the board of directors, that this was the best plan for them. You have put them into a situation that I don't think is a reading of the law otherwise, without explicit notice, would have given them any kind of belief that that is the situation they would be in.

Mr. DUNCAN. Mr. Chairman, I understand that there are differences of view on this. Across the Congress there, I suspect are views equally strong on both sides of this issue.

Senator BOREN. I haven't heard anyone else in the Congress who participated in either the Conference Committee, or in our committee, state that interdistrict mergers should be allowed to be forced without vote. In fact, we took it up in the Conference Committee and we explicitly rejected that. I would guess that Congressman Glickman and others with whom I have talked would have the very same view as I think Senator Cochran would have, that these rights should be preserved.

I won't pursue this any further, Mr. Chairman. Thank you.

Senator CONRAD. I might just add, I think you know, from my earlier line of questioning, I have real reservations about what has been done here, as well. As a member who was not a member of the Credit Subcommittee that participated in all but one of the markups, over 100 hours of deliberation that we had under the chairmanship of Senator Boren, I must say to you, it was my clear understanding that in situations like this, that there would be rights reserved to allow a determination by vote of the stockholders and by determination of the board. I must say I would share the sentiments expressed by the Senator from Oklahoma.

I believe that there is a right to an election and a decision by those most directly affected by the final conclusion. We discussed this issue at some great length, if you go back to the record, in the subcommittee where the markup was done. This was the most, I would say, laborious markup that's probably occurred around here in a very long time with the full, active participation of members. That whole question was addressed several times and there was a very clear, strong feeling that there ought to be a clear indication from the stockholders and the boards of directors as to what disposition was made.

Senator **Boren**. Same in the Conference Committee when we discussed the proposed Stenholm amendment.

Senator **Conrad**. Which was rejected.

Senator **Boren**. Which was rejected. Which would have given you the authority, but that was rejected, not passed.

Mr. **Duncan**. We have not made our determination frivolously. We have made it upon very careful consideration of the statute, and I will most assuredly determine the language associated with the bid package and provide that with respect to the question you have raised and provide a written answer to you, Mr. Senator.

Senator **Boren**. Could you supply us with the written opinion of the FCA General Counsel on this matter, too, the legal advice that you received?

Mr. **Duncan**. Yes. [See page 724.]

I would hope that you would understand the Pandora's Box that you are opening up when you pursue the——

Senator **Conrad**. Let's be very clear. We're not opening up any Pandora's Box. We're telling you honestly and openly what we believed was the intent of Congress when we passed that law.

Mr. **Duncan**. I understand that. I understand.

Senator **Conrad**. We're not opening up any Pandora's Box by action we've taken. It's action, frankly, that has been taken by FCA that's opened a Pandora's Box, if one has been opened.

Mr. **Duncan**. The question that arises is, if an FICB is granted unusual opportunities that were not provided to other FICB's, are there not other associations that may choose to seek similar opportunities? There are owners of the former FICB's that might seek——

Senator **Conrad**. Well, we have a question of what is the law of the land. That is the underlying, the dominant question here. I think Senator Boren and I are of like mind on what was the clear intent of Congress. I don't know what else we could tell you other than what our clear understanding was at the time we wrote the law.

Senator **Gorton**. I will try you relatively briefly on a couple of other subjects. The chairman asked and you answered, I think fairly clearly, questions about what you think the present status of the Board is with only one member on it concerning what you can and what you can't do.

Do you have any insight as to when you will have a legally constituted Board, sufficient to make decisions?

Mr. DUNCAN. No, sir, I do not. I discovered, to my surprise in the Sunday Post, that I was on the verge of thinking about leaving my current position. One should not put much credence in those rumors.

As an aside, some months ago there was a rumor that took life within the agency and within the System that not only was I going to resign but that I had resigned several days previously.

Senator GORTON. To your surprise.

Mr. DUNCAN. Much to my surprise. I eventually sent an electronic message to our people, reminding them of Mark Twain's words, that word of his demise had been substantially overstated.

Senator GORTON. You are an authority on your own intentions but not on the intentions of the administration in any respect?

Mr. DUNCAN. Mr. Senator, that is correct. I am not in a position to bring you counsel as to when or who will be the appointees to the Board. At this point, the agency has been able to move along very smoothly. We have not run into issues that have caused problems for the Farm Credit institutions that we regulate.

At some point, there will be a backlog—I should say there is proposed regulatory language and so forth that will be ready for the new Board when it is in place, and at some point it will become important that that new Board act on the proposed regulations.

Senator GORTON. On another subject, just as a matter of my own curiosity. In the middle of the first page of your written testimony, you speak of the examinations which you conduct of FCS institutions with the CAMEL approach to ratings.

Mr. DUNCAN. Yes.

Senator GORTON. You report to us that in 1988, 67 of them received that rating of 5. What happens to a 5-rated institution? Where are those 67 institutions today?

Mr. DUNCAN. You can be assured that any institution that is rated a 5 will have some kind of regulatory actions placed on that institution, with the intent of promoting the correction of the problems. A 5-rated institution is an institution in very serious financial difficulty.

Senator GORTON. Obviously. I understand that. Are some of them out of business at this point? Where are they right now?

Mr. DUNCAN. There are some associations that have been placed in receivership and there is a Federal land bank that has been placed in receivership.

Senator GORTON. And they were in these 1988 5-rated?

Mr. DUNCAN. That is correct, they would be; yes, sir. That is correct.

Senator GORTON. You are, of course, in the process of conducting such examinations this year?

Mr. DUNCAN. Oh, yes. We will be conducting examinations of almost all the institutions, onsite examinations of almost all the institutions this year. The only ones that we will not be in on an onsite basis will be Federal land bank associations that are not direct lenders.

Senator GORTON. Will you expect more or fewer 4's and 5's this year?

Mr. DUNCAN. Mr. Senator, I would certainly hope that we will see fewer. I have been troubled by the proportion of the assets in these institutions that are troubled assets. They have a level, systemwide, of troubled assets that is not consistent with recovery of financial stability. I should note, however, that there was improvement in a number of measures of these institutions in 1988. But their systemwide profit levels were somewhat misleading, as reported, because almost all of the profits came from loan loss reversals. Those loan loss reversals, in our judgment, were appropriate but they are not something that can be continued into the future.

It will be necessary this year and into the future for Farm Credit institutions to, in the words of that famous television lawyer, "earn their income the old-fashioned way," through operating profits, and the institutions will have to put much more attention toward operating profits in order to build their capital base and return to financial stability so that they can provide the kind of consistent, stable, constructive, competitively priced credit services that Congress had in mind when the enabling act for these institutions was created and passed.

Senator GORTON. On a specific and local question, less than 2 weeks ago the Board of the Farm Credit Bank of Spokane transferred almost $19 million in capital from the bank to the Interstate Federal Land Bank Association and, at the same time, has announced its intention to ask for financial assistance for the bank.

Can you tell me at this point, even in general terms, how you are prepared to help Spokane to solve its current problems and what your recommendation will be with respect to assistance?

Mr. DUNCAN. We don't make a recommendation with respect to assistance, Mr. Senator. An institution becomes eligible for assistance from the Assistance Board when its borrower stock is impaired, and it is in the hands of the Assistance Board to make the determination as to whether or not assistance will be provided and, if so, what strings are attached.

I might note that in the case of the Jackson Federal Land Bank, that the Assistance Board, after consideration, determined they would not put additional financial assistance into the institution and asked the agency to place it in receivership. We, of course, had no alternative at that point because the institution was insolvent and there was no source of assistance, the Assistance Board having been given, under the statute, the authority to make the determination on assistance. In the case of Omaha, Louisville, St. Paul, the Assistance Board considered their applications for assistance and determined that assistance would be provided.

Senator GORTON. And you play no role in making a recommendation to the Assistance Board?

Mr. DUNCAN. Our role is as regulator. We are the financial regulator. We're the umpires. The Assistance Board is the institution created under the 1987 act to make the determination as to whether assistance will be provided, how much will be provided and under what terms.

Senator GORTON. With respect to some of the current activities of the Spokane Board, is it, in your view, a good idea or not a good idea for that Board to continue to pursue opportunities to lower operating costs through working on joint venture service operations with Omaha and the like?

Mr. **Duncan**. Well, let me answer that generally. I want to be very careful about answering specific questions because, as a financial regulator, we handle our regulatory actions and reports just as the other financial regulators do. That is to say they are not open for public discussion. But as a general matter, it is always important for institutions to seek ways in which they can deliver their credit services or their core business services more cost-effectively.

Senator **Gorton**. Thank you, Mr. Chairman.

Senator **Conrad**. Thank you, Senator Gorton.

We do have additional questions that will need to be asked and we will submit those for the record.

Mr. **Duncan**. Certainly.

Senator **Conrad**. Before you leave, let me ask you one other additional question that I think we would be remiss if we didn't ask. That is, do you have an initial indication on what the cost of liquidation of Jackson will be?

Mr. **Duncan**. Throughout the discussion on Jackson, I have said as follows, that it is imprudent and unwise to state figures on a liquidation. A receivership is for the purposes of liquidating the business affairs of a failed institution. Losses are discovered and recognized during a receivership; they are not made during a receivership, and one does not know the extent of the losses until that receivership is completed.

Now, in the case of the Jackson Federal Land Bank in receivership, most of the assets were sold this winter to Texas. Almost all the other loan and loan-related assets were offered for sale on Thursday of last week to the Farm Credit institutions.

The extent of the loss will be importantly determined by three factors: First, by the kind of bid that is received on those assets. If there is an unsatisfactory bid received on those assets, in our judgment, we will follow the policy that the Board established on the first round of bids which would be to take the bid offering to a global set of bidders, beyond the Farm Credit institutions. However, they are being offered first to the Farm Credit institutions, as was done in the first offering.

Second, the extent of and the success of the litigation with which the receiver is involved will have an important bearing on the cost of the receivership. Finally, an important consideration will be how the outstanding debt is dealt with. Our receiver has been in frequent discussions with the Assistance Board over some protracted period of time with regard to proposals on dealing with the debt.

I notice that the receiver is on the panel today, and I am sure that you will wish to ask the receiver more detailed questions with regard to ideas and proposals to deal with the debt. Those three factors will determine the size of the hole. I think it would be not only imprudent but possibly misleading for me to conjecture, as the regulator, as to what the size of the hole is until that receivership is wound down.

Senator **Conrad**. Let me respond to one of the comments you made, that losses are not realized in receivership. Of course, they can be realized in receivership. If a receiver does not act expeditiously or does not act prudently, they can magnify the losses. I assume you would agree with that?

Mr. DUNCAN. There is no question about that. I have included, as an appendix to my testimony,[2] the objectives that the Farm Credit Administration Board had established by which it would judge the performance of the receiver. At this point, the receiver is performing at or in excess of those objectives.

If we are successful in the receiver obtaining acceptable bids on the assets that have been offered for sale, we could, well before the end of this summer and certainly before the end of the calendar year, have essentially sold all the loan and loan-related assets of the receiver that are not tied up in litigation. That will have occurred in perhaps a 15- to 18-month timeframe.

The GAO report on receiverships indicates that, on average, it takes FDIC about 5 years to get rid of the assets of a receiver. This receivership—make no mistake about it—this receivership has moved forward with great expedition. Now, that's exactly the way we want it to go and we're going to continue to push forward in that regard.

Senator CONRAD. Let me give you a chance to respond to this observation. I have had others in the Farm Credit System say, "Look, we're headed for a $500 million loss in Jackson, $300 to $500 million. This thing has been bungled. The loss need not have been nearly that high if they had moved expeditiously in the front end." This is not a criticism directed at the receiver, by the way; it's directed at those who, in the observations of others, moved too slowly to move on a troubled institution. The comments that I have heard, and this is from people at high levels in the Farm Credit System, if Jackson had moved on restructuring early, expeditiously, that much of this loss could have been avoided.

What is your reaction to that?

Mr. DUNCAN. Well, one has to be careful about responding to a question like that so that we all understand that we are conjecturing, because the Jackson Federal Land Bank did not, in the judgment of the agency, move expeditiously. Indeed, we were concerned about that for some period of time, about the performance of that institution, and the board of directors of that institution and its management were well aware of our concerns. There was, of course, legislation under consideration at that time that could conceivably have given the Jackson Federal Land Bank a new lease on life had the Assistance Board chosen to put financial assistance into the institution.

Now, if what you are hearing from the Farm Credit System, whoever that spokesperson is, that had the Jackson Federal Land Bank been run prudently and properly, there wouldn't have been the losses associated with the receivership, I would go them one better and say there wouldn't have been a receivership.

Senator CONRAD. Well, let me just make plain, they're critical of the regulator. They say if the regulator had moved earlier and not waited until—when did we have a receiver? In 1988?

Mr. DUNCAN. That is correct.

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[2] See pages 711 to 715 for the material.

Senator **Conrad**. If we had moved when it was more clear that there were very serious problems in Jackson, moved in 1986, moved in 1987, and put someone in there that would have had a chance to restructure, get loans that weren't performing back as performing loans, that much of this loss could have been avoided.

How do you respond to that?

Mr. **Duncan**. I think that probably is based on inaccurate information and on misperception. It is important to remember the relationship of a regulator to the regulated institution. We do not run those institutions. We do not have the authority under the law to run them. The Congress specifically removed from the Farm Credit Administration any capacity to affect the interest rate in those institutions. Some of the institutions used that opportunity to price themselves into financial problems.

It is not only a matter of dealing with the restructuring of loans. And, Mr. Chairman, I certainly would concur that that was one of the problems and that that would have been a part of the potential solution. Improving the earnings of that institution, improving its credit administration, improving its credit underwriting standards, improving its asset liability management also would have been necessary. The capacity to achieve that, is first and very directly in the hands of the elected farmers and ranchers who sit on the boards of directors of those institutions, and then in the hands of the management.

We have taken regulatory action with troubled institutions, where we believed appropriate, to promote the correction of problems. For the most part, when we have done that, institutions have responded, their directors have responded in quite a forthright and responsible fashion and worked toward correction of problems.

Senator **Conrad**. Let me be very direct because it has been suggested to this Member that perhaps there was political pressure applied on the regulator not to proceed more rapidly on Jackson.

Was there political pressure applied from any source, whether it be the White House, Members of the Senate, Members of the House, Governors, any pressure applied to the regulator to prevent more rapid action on Jackson?

Mr. **Duncan**. Perhaps the primary reason that there was not a move on Jackson sooner than there was, was that the Congress was considering, and moving to conclusion, legislation that had the potential for creating a new lease on life for the Jackson Federal Land Bank, and the regulator believed that the Jackson Federal Land Bank deserved the opportunity to have that new lease on life if the terms of the legislation were going to provide that or if the Assistance Board was prepared to provide that assistance. That was not forthcoming.

Now, in very direct response to your question, I know of no political pressure that was applied to me, as a member of the Board, to divert my attention from a troubled institution. And, indeed, I think that you have watched my performance on the Board and in the agency long enough and in testimony before the Congress to know that I don't divert my attention very easily and I don't shrink from the responsibilities that go with being a financial regulator.

I recognize that people will not always be happy with the judgments that we make and the actions we make, but we will make them in a prudent, responsible fashion. We will do our dead level best to make sure that we are correct in what we do; and when we believe we are correct, we will act and, hopefully, in a prudent manner.

Senator CONRAD. Let me just say that I hoped that would be your answer because, as you know, in the current climate almost anything that happens, there is a suggestion that somewhere there was inappropriate action somewhere in the political system. So there have been these suggestions. I think you know there have been these suggestions. I think we need to get the problem out in the open and have people answer openly and forthrightly, as you have done. I thank you for the answer.

Mr. DUNCAN. Mr. Chairman, I came to the agency in mid-1985 to be part of the cleanup crew, and I have been part of the cleanup crew and we've made substantial progress. I am proud of the progress we have made, and no one should think that I am going to trade my integrity or the integrity of this agency.

Senator CONRAD. We appreciate that.

Let me go back, finally, just to say once again that I think it's very important that we take a look at the importance of having clear indications out there on what criteria are, that we have a transparent system so that people understand on what basis are they going to be judged regarding restructuring, and I would urge you to give that a little extra boost out there that is needed to get that done.

Mr. DUNCAN. Mr. Chairman, I have spoken with each president in each district where there was a pattern of a problem and I have said almost the same words that you have said. I have said, "Look, what you are dealing with here is a problem with the spirit of the law, and it isn't in your interest not to comply with the spirit of the law. You may not be violating the statute or the regulations but you ought to go beyond that. You ought to be complying with the spirit of the law."

Quite frankly, I received a very favorable response and, as we watched our mail, we discovered the flow of letters relating problems diminished. I would like to think that is because there is increasingly a good faith effort by these institutions to abide by not only the statute and the regulation but by the spirit, as well, Mr. Chairman.

Senator CONRAD. Thank you very much for your appearance here today. We have obviously gone a good bit longer than we had anticipated, but I think we have a lot of issues here that needed to be discussed and aired and I think we have done that. I want to, again, thank you for your participation.

Mr. DUNCAN. I appreciate the opportunity to visit with the subcommittee on behalf of the agency and the Board. Thank you.

Senator CONRAD. Thank you.

Next we are going to hear from our first panel. James Massey, executive director of the Farmers' Legal Action Group; J.D. Woods, Jr., of J.D. Woods, Jr. Interests, Inc., Katy, Texas; Dr. Floyd Neth, a farm management consultant of Daphne, Alabama; Jo Ann Forsness, chairperson of WIFE National Farm Credit Committee; Pam

Baldwin, the president of Idaho Rural Council; and Cheryl Cook, legislative analyst of the National Farmers Union.

Let me indicate that obviously we have gone over here quite dramatically in terms of time. I would ask each of the witnesses to summarize their prepared testimony and the full prepared testimony will appear in the record as if presented. Given the number of witnesses and the amount of time that we took with the Acting Director—we have nine more witnesses here to go—we will be here the rest of our natural lives if we don't do that expeditiously. So with that in mind, we will proceed and we will try to move rapidly.

Jim, welcome. Welcome to all of you. We very much appreciate your participation today.

STATEMENT OF JAMES T. MASSEY, EXECUTIVE DIRECTOR, FARMERS' LEGAL ACTION GROUP, INC., SISTERS, OR

Mr. **Massey**. Mr. Chairman, I am James Massey. I am the executive director of the Farmers' Legal Action Group which is based in St. Paul, Minnesota, and also has an office in Sisters, Oregon.

FOCUS ON PROBLEM OF ENFORCEMENT FROM THE PERSPECTIVE OF BORROWERS WITHIN THE FARM CREDIT SYSTEM

To cut it short, Mr. Chairman, I want to focus my comments today on a problem of enforcement from the perspective of borrowers within the Farm Credit System. As I think the chairman is aware, my organization employs attorneys and paralegals. We provide farmers and ranchers around the country and lawyers with education, with publications, and we engage in litigation on their behalf.

I am currently the lead attorney in *Harper* versus *the Federal Land Bank of Spokane,* which is a lawsuit that was brought under the Agricultural Credit Act of 1987. I have also been of counsel in *Leckband* versus *Naylor, Martinson* versus *the Federal Land Bank of St. Paul,* and I am a coauthor of an *amicus* brief filed in *Zajac* versus *the Federal Land Bank of St. Paul.* These are all cases which raise a central issue for borrowers under the act.

Senator **Conrad**. I love these devices.

Mr. **Massey**. Does that mean I'm finished?

Senator **Conrad**. Yes. I tell you, we are really going to be done quickly.

Mr. **Massey**. I don't think I've made any mistakes yet in my testimony; maybe I should quit while I'm ahead.

Very briefly, Mr. Chairman, as the Chair knows from my prepared testimony submitted to the subcommittee and statements made previously to this subcommittee, from the perspective of borrowers who are not offered loan structuring, the process really ends there.

DISCUSSION TODAY WAS TROUBLING

Some of the discussion today was troubling to me, particularly the comments from Mr. Duncan and his counsel about what the regulations say and what the role of the FCA might be. The statute that Congress enacted, the Agricultural Credit Act, said that the FCA shall promulgate regulations to implement the act. In addition to that requirement, there is a general rulemaking requirement and authority in the enabling legislation of the Farm Credit Administration, as well, which says that FCA shall publish regulations as are necessary to implement the Farm Credit Act.

REGULATIONS ARE LANGUAGE OF THE STATUTE REPUBLISHED

The regulations, with one very minor exception, are essentially just the language of the statute republished, as the chairman noted. I think it was said that it's a matter of characterization. Well, it's not a question of characterization at all; it's a question of reading, side by side. I think that anyone who reads the act side by side with the FCA regulations will see that the regulations, except in one respect, and that was the issue raised in the *Martinson* case in the chairman's State, are exact republications of the statute.

It seems to us, from a common sense standpoint, even without regard to what problems that causes, that if Congress had intended the agency to republish the statute, it would have said, "Republish the statute as regulations." Probably more properly, the Congress meant that it expected the agency to carry out its regulatory duty, as a regulating agency, of fleshing out the statute, helping to interpret the statute, helping to fill in the gaps of understanding, based on the agency's expertise and based on the input that the agency receives when it publishes for notice and comment.

COMMENTS ON REGULATIONS

The proposed regulations were published last year in the spring. The agency received a huge number of, and a great quantity of, comment. In fact, my testimony submitted here today is really a restatement of the comments that we made to the Farm Credit Administration about, from our clients' perspective, how they could flesh out the act and answer some implementation questions that Congress did not specifically address and cannot specifically address in legislation.

SPIRIT OF THE LAW

Mr. Duncan talked about spirit. There is always a spirit in a statute. The agency's job is to make sure that the statute gets the additional equipment attached to it so that the spirit becomes the law. And that is why the courts have said that Federal regulations have the same force and effect as Federal statutes, once they are properly promulgated under the Administrative Procedures Act.

Now, let me address very briefly why that is significant. In some situations, it might not make any difference. If this were not an agency with a history that required cleanup, as has been stated, starting in 1985; if it weren't a system that was itself on the brink of bankruptcy for the last 10 years; if it weren't an area with hotly contested borrowers' rights and remedies and restructuring that led to the enactment of a borrowers' rights section in the 1987 act, earlier in the 1985 act, and earlier than that in the 1984 credit amendments; if it weren't an issue that involved literally tens or hundreds of thousands of farmers and ranchers around the country, maybe it wouldn't make any difference.

But the fact is that every person who applies for restructuring under this act is dependent upon the judgment, as the chairman has pointed out, of an agent in the field who has to guess, or an agent in the field who is trying to use district policy that has been developed without any guidance from the Farm Credit Administration.

PROBLEMS IN ADMINISTERING THE ACT

So the first problem is, we have inconsistency, we have failure to clarify what certain elements of the statute should mean and do mean, and we have a resultant lack of uniformity throughout the System and, in fact, lack of enforcement. The reason we have lack of enforcement is this: the Congress did not include language in the 1987 act that said, "You may sue to enforce this act," express language that would create what the courts call "an express private right of action."

We have litigated now—I personally in the context of four cases and there are probably another dozen pending in the country—the question of whether or not Congress intended to imply the right to sue under the Farm Credit Act. The Farm Credit System says no, the borrowers say yes, the courts have split. In the Senator's own State of North Dakota, Judge Webb said, "Yes, Congress intended to allow borrowers the right to sue under this act," and Judge Conmey said, "No, it didn't," and the issue has joined itself in the Eighth Circuit with a split among two judges that sit only 100 miles apart in the State of North Dakota.

Senator **Conrad**. 200 miles.

Mr. **Massey**. Really, when you leave town in North Dakota, Mr. Chairman, it's hard to count because it's just so far—100, 200, 500—it's a long ways between those towns up there.

That creates a problem because the Farm Credit Administration is simply not there for enforcement. I have a letter here from Mr. Naylor. Last fall, we wrote a demand letter and we said, "Well, since the Farm Credit lenders have raised, in their litigation every time, that the sole responsibility for enforcement of this act was intended to be placed with the Farm Credit Administration, not with the individual borrower," we wrote a letter to Mr. Naylor and said, "We've got a bunch of violations to report and we would like you to take some action." He wrote back and said, "Thank you for your comment on the regulations," 2 months later.

BORROWERS AND LAWYERS HAVE BEEN TOLD SEVERAL THINGS ABOUT THE FCA CEASE AND DESIST POWER

Borrowers and lawyers have been told several things about the FCA cease and desist power: One, it's not available as an individual enforcement mechanism; two, you don't have input in the process; three, you don't get the results of the process; and, four, it's entirely off the record and subject to the FOIA (the Freedom of Information Act) exclusion for financial regulators of the Federal Government.

So, while the FCA is not publishing regulations that implement the act and not using its cease and desist powers to enforce borrowers' rights under the act, the lenders in the System are arguing in

Federal courts that the FCA procedures are the only remedy that Congress intended our clients to have. So far, this argument has been accepted in several courts around the country.

REVIEW THE ACT IN VERY SUBSTANTIAL WAYS

Our prepared testimony asks the committee to review the act in very substantial ways. We have concluded that the Farm Credit Administration has abdicated any responsibility for monitoring or enforcement of borrowers' rights. Unless Congress drafts and passes some substantial amendments to the act, or at least something to get the agency to do its duties—which it may not be able to do in the absence of a full Board at this point these problems will continue.

For those borrowers who do not qualify, in the System's estimation, for restructuring, there's really nowhere to go, except one place. The Spokane Bank just had a verdict entered against it for $969,000 in eastern Oregon under a State law theory lender liability case. Now, this did not involve the Agricultural Credit Act of 1987 directly.

But what happens is, if you don't have a direct and immediate remedy to try to get the situation fixed before it gets liquidated into damages, then down the road for every one, for every 10 or every 100 of those borrowers who have been denied restructuring, some lawyer is going to find a lender liability theory and some of them will stick. In this case, it's $1 million in damages and about $350,000 in attorneys' fees. That's not a good place to resolve it. That farmer would rather have his ranch back than $1 million, I'm quite certain.

WHAT CONGRESS OUGHT TO ADDRESS WITH THE FCA

I think that what Congress ought to address with the FCA, and with all due respect would ask that it do so, would be some honest response to the question of how it has implemented the regulations, what it's doing about enforcement. In the end, quite clearly, what we need is an express private right to sue for FCS borrowers so that somebody can be minding the store. It's not being minded now from that perspective and those regulations are simply going untended.

Subject to any questions from the Chair, Mr. Chairman, I would ask if I might be excused. I have an airplane to catch and it's a long way back to Oregon.

Senator CONRAD. Go get your plane.

[The prepared statement of Mr. Massey appears at the conclusion of the hearing.]

Mr. MASSEY. Thank you, Mr. Chairman.

Senator CONRAD. Thank you very much, Jim.

Next will hear from Mr. J.D. Woods, Jr., of Katy, Texas. Mr. Woods, welcome.

STATEMENT OF J.D. WOODS, JR., J.D. WOODS, JR., INTERESTS, INC., KATY, TX

Mr. WOODS. Thank you.

BACKGROUND

Mr. Chairman, members of the committee, I appreciate this opportunity to appear before you today to discuss the implementation of the provisions of the Agricultural Credit Act of 1987 relating to restructuring of distressed loans.

I am a rice, soybean, and oat producer in Texas and Louisiana, and a representative of the Southern rice industry holding a number of elected and appointed responsibilities.

DIFFICULTIES WITH THE ADMINISTRATION OF PROVISIONS OF THE ACT

I am appearing here today on behalf of agricultural producers in the Southern part of the country who have experienced difficulties with the administration of provisions of the act.

OPPORTUNITY FOR RESTRUCTURING

My testimony does not merely reflect my personal experience, but that of many other producers. These producers, in my opinion, are superior farmers who will survive and could save the respective districts substantial sums of money if they are given an opportunity for restructuring of their loans, as provided in the act.

Bank management in the South seems philosophically opposed to restructuring distressed loans. This is clearly illustrated by the attached September 30, 1988, Farm Credit Corporation of America report and analysis. Please note that the Omaha District, for example, has restructured 2,924 or 74 percent of its troubled loans, whereas Texas has restructured 29 or 1.1 percent, and Jackson, 80 or 1.4 percent of its troubled loans. The restructuring rate for the Texas and Jackson Districts did not increase in the following quarter, according to the December 31 report of the FCCA.

It appears to me that the banks have a knee-jerk reaction to foreclose on distressed loans and the least cost analysis, as developed by the banks, is only an exercise in manipulation of numbers to support their decision. In these cases, the banks have not acted in their own self-interest. I am aware of many cases in the South of distorted analyses and can provide specific details, if desired, to the subcommittee.

LITIGATION

During the past 2 years, I have been involved in litigation initiated against me by the Federal Land Bank of Jackson, Mississippi. Several issues were litigated and litigation costs exceeded $1 million for the bank and $850,000 for me. The only way by which I could obtain the benefits of the borrowers' rights provision of the act was by filing a voluntary petition under chapter 11 of the Bankruptcy Act. My case was completed by final order of the court on May 25, 1989.

BANKS ARE NOT IN COMPLIANCE WITH THE LETTER OF THE LAW NOR ITS INTENT

It is my belief, which is reflected in the facts, that these banks are not in compliance with the letter of the law nor its intent. That view, I might add, is one widely held by farmers in the area. What is occurring is a denial of fundamental rights given to borrowers by the act.

RESULT OF THE BANK'S REFUSAL TO IMPARTIALLY FOLLOW PROCEDURES OUTLINED IN THE ACT

As a result of the bank's refusal to impartially follow procedures outlined in the act, I have witnessed the following:

First, borrowers seek protection in the bankruptcy courts and funds available for debt service are used to pay legal expenses.

Second, the bank incurs unnecessary legal expenses and staff personnel must be diverted to the litigation.

Third, borrowers are forced to neglect their farming operation while devoting time to court appearances, the preparation of documents, and settlement negotiations. Less net cash-flow is generated that would go to debt service.

Fourth, in cases where the bank is marginally secured or undersecured, the interest that normally would be earned is lost for 1 to 3 years during the litigation.

Fifth, in cases where the bank uses unrealistic, high appraised values of land to bias the analysis toward foreclosure, a long holding period results with no debt service and a much lower land price is ultimately received on the sale of the land.

WHY SOME FARMERS HAVE FILED SUIT

Some farmers have filed suit in Federal Court in an attempt to gain a fair and impartial determination of the least cost alternative for their distressed loan. The banks have taken the position in court that there is no private right of action given to farmers in the act, and therefore, the farmer does not have the right to challenge their decision to foreclose, even when it is clear that the banks have acted in an arbitrary or capricious manner.

HUNDREDS OF FARMERS WILL LOSE THEIR LAND OR SIMPLY GIVE UP WHEN FACED WITH EXPENSIVE LITIGATION AND/OR BANKRUPTCY COSTS

Clarification of the act will come in time as litigation works its way through the courts. In the meantime, hundreds of farmers will lose their land or simply give up when faced with expensive litigation and/or bankruptcy costs. The banks seem to have an inexhaustible supply of time and money to hire lawyers to find ways to avoid the fundamental provisions of the act.

RESTRUCTURING IS IMPORTANT

Restructuring is important for troubled borrowers, but more so to *all* borrowers, including those who have remained current on their loans. The policies of some institutions are causing an unnecessary loss of bank capital which ultimately must be paid for by all borrowers, or, in the alternative, the taxpayer.

PROVIDE A CLEAR MESSAGE TO THE BANKS

I ask that the subcommittee provide a clear message to the banks that they must implement the restructuring of distressed loan provisions of the act and, beyond that, enable a borrower to obtain an impartial review of his case by a court or other impartial tribunal.

Thank you, Mr. Chairman.

[The prepared statement and attachments of J.D. Woods, Jr. appear at the conclusion of the hearing.]

Senator CONRAD. Thank you very much.

Dr. Neth.

STATEMENT OF FLOYD T. NETH, FARM MANAGEMENT CONSULTANT, DAPHNE, AL

Dr. NETH. Mr. Chairman, I have submitted my prepared testimony so I am not going to review that. I just ask that the committee review it because we are running out of time, obviously.

QUESTION OF THE RIGHT TO INFORMATION

I would just like to depart completely from my prepared statement and address a question that you asked Chairman Duncan originally. That involved the question of the right to information by which a farmer or his farm management consultant could determine, in the preparation of his restructuring proposal, whether or not that proposal would be acceptable.

HELPED FARMERS PREPARE APPROXIMATELY 12 RESTRUCTURING PROPOSALS

Between the period in March and June 1, 1988, after we received a copy of the law in south Alabama from Senator Heflin, another farm management consultant and myself helped farmers prepare approximately 12 restructuring proposals. The first one that we prepared, we spent about 100 hours of time on it. One of the provisions of the law is that in preparing this proposal, you have a right to a meeting with the local lender. The purpose of that meeting, in accordance with the law, is that you present a preliminary—this was our interpretation—that you present a preliminary proposal at that meeting and that proposal is discussed and it is reviewed, and suggestions are made by the lending officer for improving that and putting it in a condition where it could be acceptable.

Then the farmer and his consultant would go back and incorporate all those suggestions, make the computations to see whether the cost of restructuring was equal to or less than the cost of foreclosure and present, finally, within the time period allowed a restructuring proposal that would be acceptable.

Now, what actually happened in this first meeting at which there were two representatives of the First South Credit Association and the farmer and his representative, and I was in that meeting. What actually happened was that we presented our proposal and asked for comments and they said, "We don't have any comments." We said, "Well, we think that you are supposed to help us write a plan that will be acceptable," and they said, "No, that's not what we're here for. We're just here for you to ask us some questions to see if it's in the proper form and that sort of thing, nothing of substance."

So we said, "Well, we need to know some numbers that we can apply in the computation of the cost of foreclosure to see if what we're doing is in the right ballpark," and they simply said, "Well, that's private information, it's confidential. You give it your best shot. Whatever you think is your best proposal, most favorable, least cost to the institution and so forth, and we'll apply the numbers to it and let you know whether it's acceptable or not."

Well, that didn't give us much to work on, did it? So we went back and I personally reviewed the foreclosure land files of Baldwin County, Alabama, for all the period of foreclosures in this current farm crisis period. The first foreclosure occurred about 1982 and from then, they picked up and got to a fairly high level in 1984, 1985 and 1986 and continued on. There were 50 foreclosures in all by the Federal Land Bank of Jackson.

Now, I took the date that the deed was—foreclosure deed—was filed, got the description of the property and then ran that description to the time it was sold, so now I have a time period between the time of foreclosure and the time of recovery. I then ran a statistical analysis of that and I came up with 634 days. After an initial long period that was as much as 1,500 days, they came down the curve, leveled off at about 600-plus days.

So now I had a number to use for computation of cost of foreclosure because now I could take that time and take their cost of funds and compute what the loss in income cost was. I could take that time, if I knew the rate of decline in the land values—I knew what the cost was in terms of loss in income because the land value was dropping with time.

But the thing we needed was not that for Baldwin County; what we needed was an analysis of it for the Federal Land Bank of Jackson from their entire portfolio of information. They refused to give us that and just said, "You're on your own, boys. Bring it to us and if it's satisfactory, we will accept it; if it isn't, we won't."

So this particular one, after we did this exhaustive thing, we turn in a proposal that, in my view, could not be turned down, that the cost of foreclosure was much, much greater than the cost of restructuring, and we had the information to back it up. But then the thing was turned down on subjective reasons, purely.

The next thing that happened, we had the Credit Review Committee meeting and, to put it quite frankly, it was nothing but a kangaroo court. They just asked a bunch of questions and we presented our arguments about the thing. One of their reasons for turning it down was that this was not the least cost alternative, that there were other alternatives that were less costly than our proposal. So I said in that meeting, "Well, you've required us to bring all this information together so you could determine whether the cost of foreclosure was less than or greater than the cost of restructuring, and we've done cash-flows and the whole bit to provide you information to make that calculation, but all you said was that there's an alternative that's cheaper."

So I said, "Let's discuss this alternative. We'll put the numbers to it. If it flies, we'll buy the alternative." They said, "Oh, no, that's not a subject for discussion in this. We're just discussing your plan to see whether yours is acceptable or not." So the net result of it, after about 2 hours of arguing, was that everybody went home and the farmer, in about a week, got a letter saying that they had supported the original denial, and in about another day he got his foreclosure papers.

Well, to make a long story short—and I needed to make it a lot shorter than this—the farmer, by the time all this had happened, he had so many violations of the spirit—not the spirit—the actual, in my opinion, the legal aspects of the law that he just went to a higher official of the First South Production Credit and said, "Look. I'm going to contest this foreclosure in court and if you don't want to come around and work out a settlement with it, we will settle it in court." So the final result of it was that that particular case was settled by a cash debt compromise.

Now the other restructuring, one we carried to chapter 12 and it was restructured then by the chapter 12 judge, and he accepted the restructuring plan that we had originally proposed to the Federal Land Bank of Jackson. It cost $20,000 for the bankruptcy proceedings that resulted in exactly the same thing that could have been done without going to the bankruptcy, had the Federal land bank not been intransigent in complying with the law.

Of the other 10 or so, at this date there has been some verbal agreements between the Federal land bank receiver and the farmers but none has been yet reduced to writing. That has been—some of them are 13 months, 14, 15 months old. Now, that is the kind of compliance we are getting in the Jackson District.

[The prepared statement and attachments of Dr. Neth appear at the conclusion of the hearing.]

Senator CONRAD. Thank you very much, Dr. Neth. We appreciate your testimony.

Next is Jo Ann Forsness, the chairperson of the WIFE National Farm Credit Committee. Welcome.

STATEMENT OF JO ANN FORSNESS, NATIONAL FARM CREDIT CHAIRMAN FOR WOMEN INVOLVED IN FARM ECONOMICS (WIFE), WOLF POINT, MT

Ms. FORSNESS. Thank you, and thank you for allowing us time, Mr. Chairman, to appear here today.

WHAT'S HAPPENING TO THE PEOPLE IN THE STATE OF MONTANA

I want to talk today about the Spokane District of the Farm Credit System. We are facing tremendous problems in Montana, as evidenced probably by the resignation of three of the top management within the last 2 weeks. I want to talk to you—because I'm not an expert on law or figures, I want to talk to you about what's happening to the people in the State of Montana.

The calls coming into the Hot Line, which WIFE started in 1985 and now is within the Department of Agriculture in Montana, 50 percent are people facing adversity from the Farm Credit System. That is not to say that the other 50 percent—that they are participating to some extent in that 50 percent also.

DIFFICULT TIME IN EASTERN MONTANA

We have a very difficult time in eastern Montana keeping the farmers fed. It is an amazing thing that the people that are producing such an abundance of food for other people are not able to enjoy it themselves. There seems to be various times of the year when there is no money for food, fuel or heat for the homes, and none of these people that we can find have health insurance, which is going to be a time bomb, I am certain.

Montana's Association of Churches has dispersed in excess of $70,000 in emergency aid to families since 1986. WIFE has provided in excess of $27,000 since 1986 in emergency funds for these people. They just keep appearing; we just keep finding them.

ATTITUDE PROBLEM IN THE FARM CREDIT SYSTEM

I think there is an attitude problem in the Farm Credit System, the problem being that everything for the System and nothing for the borrower. When you talk to any of the counselors or the credit advisers in Montana and tell them that you have a problem with the Farm Credit System, it's too bad because there really isn't anything you can do unless you care to institute a chapter 12. People in my age group do not want to go into chapter 12. That has always been considered a no-no and they don't want to do it. There is very little recourse.

YEARLY RENEWAL

In one of our agriculture papers in Montana in the last number of months, Agrinews, was an article or an inneroffice or innersystem memo from the Farm Credit System which said, in effect, "When you're dealing with distressed borrowers or borrowers that might become distressed, don't be in too big a hurry to deal with them because they will be a lot more ready to deal with you after they wait." We've talked with people who are just doing their yearly renewal and it has taken them 11 months to get that done in our State.

NO FUNDED PROGRAMS FOR BEGINNING FARMERS

There are no funded programs for beginning farmers. Since the average age of farmers is something over 50, we think that there should be a funded program for that. We think maybe that Congress will have to accept a little bit of the responsibility for what is appearing in these districts because you failed to put teeth in the law to force these people not to deal so harshly with the borrowers.

I am amazed every time I travel to one of these meetings that we are told how good we've got it out there, but yet these people keep calling with problems. Maybe they are imagining them, I don't know.

FORECLOSURE

In the Spokane District, they have foreclosed about the bottom third, and the top third has exited as fast as they were able, to exit from the System to banks or wherever they could get refinancing. It seems to me like that does not leave a very viable System when you only have a middle third. When you take off the bottom third, then the middle third—does that become the bottom or the top? I don't know.

The Farm Credit System is, so far, cooperating in the mediations in Montana. However, there has only been just a few, so there is no pattern developing. If the decisions go against the Farm Credit System, I don't know whether they will continue to participate or not.

The attitude seems to be "All for the System and nothing for the borrowers." There is no information. There are fixed interest rates within the System, they have the availability of fixed interest rates; they're not telling anyone about that, or at least not anyone that we know about.

People are retiring, putting their land in CRP to make their payments and their interest rates are going up three or four times in as many months. One young fellow—he was a different case—talked about restructuring or asking for a lowering of interest rates and, of course, they have to pay for that. He paid for that and received the lowering of interest rates for 27 days. That's pretty ridiculous, I think.

The System is using deficiency judgments when figuring least costs. Now, I'm told—and I don't know anything about business law—but I am told that a deficiency judgment should be a separate action. You should first go ahead with the foreclosure and then go in and ask for the deficiency judgment. When the Spokane District was asked how often they were granted a deficiency judgment, they said, "Always." I haven't checked that out but that's what they say.

TERRIBLY DAMAGING TO OUR SMALL TOWNS

This is terribly damaging to our small towns. You can travel across Montana and see empty businesses that had been there for a number of years, but the fact is that they are dealing much too harshly with the borrowers. I know when the Spokane District testifies, they will tell you that is not so but that is, from our experience, what we are finding.

Thank you.

[The prepared statement and attachments of Ms. Forsness appear at the conclusion of the hearing.]

Senator **CONRAD**. Thank you very much.

Next we will hear from Pam Baldwin, the president of the Idaho Rural Council.

Welcome, Pam.

STATEMENT OF PAM BALDWIN, PRESIDENT, IDAHO RURAL COUNCIL, NATIONAL SAVE THE FAMILY FARM COALITION, MERIDIAN, ID

Ms. **BALDWIN**. Hello. I appreciate the opportunity to come here and to share our concerns about the implementation of the Ag Credit Act.

BACKGROUND

I and my husband operate a registered dairy herd in Idaho. I currently serve as president of the Idaho Rural Council and I am on the Credit Committee for the National Family Farm Coalition. I also coordinate the Farm Crisis Hot Line in Idaho. We have no ag funding for our Farm Hot Line.

I am testifying on behalf of the National Family Farm Coalition, an organization of more than 40 organizations in 32 States, who worked with you originally to ensure that there were borrower rights in this Ag Credit Act and not just a bailout for the farm banks. I have with me statements from the Idaho Rural Council and from the Dakota Resource Council which I will attach to this, and also some information from farmers directly.

WE CONDUCTED A SURVEY

In Idaho, we conducted a survey of the 1,500 FmHA borrowers and also included farm credit questions and received back 150 replies, and I have some testimony from those farmers on how they have been dealt with the Farm Credit System.

INTENT OF LAW NOT HAPPENING

As I understand it, the intent of this legislation was to enable family farmers to restructure their farm debt, while allowing both the agrilenders and the agriborrowers to maintain viable or at least rebuild their viable businesses. We are finding that thousands of farmers have had their rights foreclosed on through FCS's and FCA's failure to take action on borrowers' rights provisions in the law.

I DO NOT CONSIDER A FORECLOSURE A RESTRUCTURING

In many cases, we are hearing reports that deeds-in-lieu, foreclosures and bankruptcies are being included in the overall restructuring statistics reported by Farm Credit Services. I do not consider a foreclosure a restructuring, and I don't believe it was the intent of Congress that a foreclosure was to be a restructuring.

I AM ONE OF THE LUCKY "RESTRUCTURED" BORROWERS

I am one of the lucky "restructured" borrowers in our 12th District of Spokane. My husband and I had $149,000 debt load to Farm Credit Services in 1986. We were requested to go into the dairy buyout because we had some carryover. We had never missed a payment to Farm Credit Services and we did not have a dairy assignment.

Upon asking for forbearance, we were told that our plan would not cash-flow, given the price of cattle, et cetera, at that time, and we had our operating loan terminated. At that time, we decided to feed our cattle instead of paying Farm Credit Services. So for a year and a half we used our payment that would have gone to Farm Credit Services for operation of our dairy.

In December 1988, we signed a restructuring agreement that allowed for 3 years of interest only at 6.25 percent, with a balloon payment of $170,000 at the end of that time. Due to a 70 percent increase in cost of feed in our area due to the drought conditions, we now are faced with the possibility of having to restructure—in fact, the probability of having to restructure our restructuring plan. There is no provision for that in the Ag Credit Act so we will probably have to file a chapter 12, which is the whole reason why we tried to restructure all along.

NEED TO BE ABLE TO MAINTAIN SOME VIABILITY IN THE RURAL LANDSCAPE

Based on the overall interest in rural development and everything, we feel like our unsecured creditors, as well as the bank, as well as the farmer, need to be able to maintain some viability in the rural landscape or there will be no reason to bring in better roads and sewer systems to our communities.

EVERY SINGLE PROBLEM THAT WE HAVE EXISTS IN TEXAS AND ALABAMA

I have some individual cases which point up the problems that have been happening over the entire United States. It's very interesting to know that even though we're individual borrower-owner districts, every single problem that we have exists in Texas and Alabama. It would seem very easy for the FCA to put together a package to help the borrowers of all these districts.

FARM CREDIT ANNUAL MEETING

I don't know if you have ever attended a Farm Credit annual meeting but it's all very nicely done with graphs and charts. You take a group of people whose average age is 57 or above, actually, as in our district, and they're not going to question what is told them at an annual meeting. It's just given to them. As far as we were told 3 or 4 weeks ago, the 12th District was in perfect condition; now, I understand they are applying for the bailout money. So we are not receiving the true picture, as borrower-owners in our districts.

CALCULATIONS AND COSTS FOR FORECLOSURES

Talking about the calculations and costs for foreclosures, we have worked very hard with farmers to try to determine the foreclosure costs. The closest we can come is the chapter 7 liquidation costs and the bank will, of course, not accept that as the basis.

In most all of the restructurings that I know about in the 12th District, and I have talked to farmers in Oregon, Idaho, Montana, Washington, and I also get calls from Utah and Nevada because they have no advocate groups in those States, the foreclosures will come unless a farmer files a suit, unless they file a chapter 12 or unless they do a deed-in-lieu, which is the same as a foreclosure except they have more tax liability.

APPRAISALS AND INTEREST RATES

We have been trying to get appraisals before 1984; we've been a borrower from the System from 1973. We were told that all of our balance sheets have been shredded prior to 1984. On interest rates, we have farmers who have had their interest rates doubled. If they had a low interest FLB loan and went in to restructure, their rates were doubled. That does not help but that was the only concession on the contract.

There have been court cases over a .25 percent interest. I had a farmer call who said he had to file a suit against Farm Credit Services of Spokane, and when they settled it was over .25 percent interest. It would have been very judicious for the bank to offer him a .25 percent more as his restructuring agreement.

RESTRUCTURING PROCESS HAS WHAT I CALL A "TEST CASE SCENARIO"

The restructuring process has what I call a "test case scenario," and I have brought a case with me, the Wrights from Idaho, where they received their offer to apply for restructuring. They sent in a plan. They were not allowed to meet with the Farm Credit loan officer. They were denied. They were sent a right to attend the Credit Review Committee. They attended the Credit Review Committee, were allowed to ask no questions or offer any information. They had brought a tax return which was a part of what was supposed to be sent in prior, and it had been sent in within their 45-day limit and it was denied. FCS denied looking at it. They received their foreclosure notice before they received the rejection of their Credit Review Committee. So it's a perfect case scenario of what we have happening time and time again in the 12th District.

MORE INPUT IN THE MEDIATION WITH FMHA

I would like to ask that the subcommittee ask for more input in the mediation with FmHA and also in the mediation process altogether. In States where there is no mediation, there is a much worse case scenario of restructuring than in States like Minnesota. The Omaha District has a much better record of restructuring because of the mandatory mediation in some of those States.

ARBITRARY APPRAISALS AND VERY ARBITRARY SETTING OF LAND VALUES

On first right of refusal, I had a call from a farmer in Nevada who had a MAIA appraisal, ordered by the court, for $450,000 of his ranch. He was in a chapter 11 and the stay was lifted. FCS purchased the ranch for $525,000 uncontested at sheriff's auction and 2 weeks later, FCS had an in-house appraisal of $650,000 done on the land, a copy of which the rancher received. Now, his first right of refusal will be based on the $650,000. It will raise all the various land values and when people go in to restructure, they will say, "This is the value of the land in Nevada."

So we're having very arbitrary appraisals and very arbitrary setting of land values. It also makes all of agriculture look better on paper but it is not better in the field.

As far as FmHA, our FmHA State Farm Program Director said we have about a 15 percent rate of people complying with the voluntary creditors meetings, and that FCS is one that will not come, or at least will not sit down and mediate at those meetings.

MUTUAL RELEASE OF CLAIMS

I have brought a copy of a contract, and all of the contracts that I know of in the 12th District, and perhaps across the United States, retain a mutual release of claims. I quote it in my testimony, but to paraphrase it, it removes all right of action at all against the bank, which would remove all right of the farmer to file a lender liability suit. This will stand in court and it is very dangerous. But you take a farmer who has tried for months to restructure his land and does not want to lose it or face the ridicule of people if he files even a chapter 12, which is misunderstood, but still a farmer, in 90 percent of the cases, would rather not go to court. He will sign this release. Even some of the attorneys in our State are saying that in a bankruptcy or in some other action, they would still have the right to sue when, in fact, it will remove the right of lender liability.

FARMERS DO NOT WANT TO LITIGATE

Farmers do not want to litigate. It's very obvious they would rather be in the field farming, and they want to be able to trust the people who hold their livelihood in their hands. I really appreciate the fact that the Senators remember their intent in this law. I think it is very important that the people in the field can feel that there is really some place to go with their pain. We may only be 2 percent of the Nation but so are the attorneys.

ATTORNEYS FOR THE BANKS ARE PRESSING MORE FOR CONTINUED LITIGATION

I have a great feeling—and I haven't heard this voiced many times—that the attorneys for the banks are pressing more for continued litigation. If we had all the cases restructured in Idaho, there would be no need for litigation and the attorneys would lose their extra fees for going to court. It is usually the attorneys who are quoted when we're hearing why the bank can't do a certain thing on restructuring.

I appreciate the opportunity to come today.

[The prepared statement and attachments of Ms. Baldwin appear at the conclusion of the hearing.]

Senator CONRAD. Thank you very much.

Next we will hear from Cheryl Cook, legislative analyst in the National Farmers Union.

Welcome, Cheryl.

STATEMENT OF CHERYL L. COOK, ESQ., LEGISLATIVE ANALYST, NATIONAL FARMERS UNION, WASHINGTON, DC

Ms. COOK. Thank you, Mr. Chairman. It's nice to be here.

NATIONAL FARMERS UNION IS RIGHT IN THE MIDDLE OF A LEGISLATIVE FLY-IN THIS WEEK

The National Farmers Union is right in the middle of a legislative fly-in this week. We have over 140 farmers from all over the country in town on the Hill and, knowing that the group from North Dakota is most anxious to make their 4:30 appointment with you, I will be very, very brief.

WE STILL DON'T HAVE THE ABILITY TO ENFORCE THOSE REGULATIONS

We had final regulations out of the Farm Credit Administration for approximately 100 days. When Mr. Billington resigned from the FCA Board, we lost the quorum and, in effect, we lost the power to enforce those regulations. I am very concerned that we are 5 months later and we still don't have the ability to enforce those regulations, and the agency in charge of enforcing the law is basically powerless to act.

WE NEED AN FCA BOARD

There are too many important issues facing the System right now, from consolidations and mergers, to debt restructuring, to the issuance of Farmer Mac underwriting standards, to allow this kind of situation to continue. We need an FCA Board, we need them now—we needed them yesterday. We can't wait much longer for these appointments to be made.

FCA REGULATIONS FOLLOW THE STATUTE ALMOST VERBATIM

Moving on to the FCA regulations, I would concur with Mr. Massey; the FCA regulations follow the statute almost verbatim. There is a reason for that, I am sure. The language in the act itself relied very heavily on the forbearance language that had evolved in prior FCA regulations. But that leaves us at the point where the new regulations quote the statute that is based on the old regulations, and that makes me wonder if we have made any progress in all of this.

RIGHT OF FIRST REFUSAL

There are a few cases where they did interpret the statute, and I think interpreted it wrong, where they have actually moved away from congressional intent. And I will just choose one of the examples in my written statement, the right of first refusal. Much of the motivation for that came from the System's practice of kicking out the borrower at a 13 percent interest rate, turning around and reselling the land to someone else at 8 percent or 9 percent, and that prior owner thinking, "Gee, if they had offered that to me, I'd still be on that farm and I'd still be part of that community and I'd still be making it." We came up with the idea of the first refusal right, that the prior owner ought to get that first chance to buy his farm back.

FCA has decided that System financing is not to be considered a term or condition of the loan, which means that the borrower can't buy it; the System goes to a third party and offers it to the third party. The act says the third party can't get a better deal than that prior owner might have gotten; FCA says that System financing is not to be considered in that question.

Now, I just bought a house and I'm here to tell you, financing matters in a sales contract—financing is the sales contract—and to suggest that System financing is not a loan term or condition is ridiculous. It opens a loophole the size of this room in the right of first refusal.

FCA SHOULD HAVE PROVIDED A MODEL DISCLOSURE

We would have suggested to FCA that instead of repeating the statutory language in the regulations, what they should have done was provide model farms. They would have saved everybody an awful lot of time and an awful lot of trouble and we would have much of the consistency that you spoke of earlier in the way this is being resolved. For example, they could have had a model disclosure form on loans that they wished to sell into the secondary market.

SECONDARY MARKETS

Speaking of Farmer Mac, we have already seen now draft standards for qualified loans to be pulled into the secondary market. The standards for the poolers are soon to follow. I would just remind you of one provision in the act. We all know that Farmer Mac has been exempted basically from the borrowers' rights provision of this statute, but there is provision in the act that would require Farmer Mac to look at Fannie Mae, Freddie Mac and the other secondary markets in designing their loan servicing standards. We would ask for your help.

Those standards do talk about things like temporary forbearance for good faith borrowers. They do talk about accepting partial payments. They do talk about doing things that, under this Agricultural Credit Act, would fit the very loose definition of restructuring, and we would ask for your help in making sure those standards are followed.

With that, I think I had better stop.

[The prepared statement and attachments of Ms. Cook appear at the conclusion of the hearing.]

Senator **Conrad**. Thank you very much.

I want to thank this entire panel for your contributions here today. I have heard things that will be very useful in our pursuit of these issues with the Farm Credit System and I want to indicate how much we appreciate your taking the time to participate here today. Thank you.

Next, we will hear from the second panel which is Larry Koch, the president of REW Enterprises, Inc. of Jackson, Mississippi; Robert Vanwinkle, the chairman of the board of directors of the Farm Credit Bank of Texas; Al Haslebacher, president of Spokane District Farm Credit Council; and Fred Colver, a member of the board of directors of the Interstate FLBA of Lewistown, Montana.

Mr. **Vanwinkle**. Mr. Chairman, could I ask our CEO, Mr. Rogge, to sit here?

Senator **Conrad**. Certainly.

I want to indicate that Senator Baucus sends his regards to the Montanans that are still in the audience and those who are participating on the panels, Jo Anne Forsness and Fred Colver.

Why don't we open with Mr. Koch.

Mr. **Koch**. Yes, sir.

Senator **Conrad**. Welcome. It's good to have you here. Please proceed.

STATEMENT OF LARRY G. KOCH, PRESIDENT AND CHIEF EXECUTIVE OFFICER, REW ENTERPRISES, INC., RECEIVER FOR THE FEDERAL LAND BANK OF JACKSON AND THE FEDERAL LAND BANK ASSOCIATION OF JACKSON IN RECEIVERSHIP, JACKSON, MS

Mr. **Koch**. Mr. Chairman and members of the subcommittee, thank you for the opportunity to discuss the handling by the Federal Land Bank of Jackson and the Federal Land Bank Association of

Jackson in receivership of the borrowers' rights requirements of the Agricultural Credit Act of 1987.

I will not read all of my prepared statement. There are a lot of facts and figures in there. I would like to just highlight several of those items that pertain to the borrowers' rights.

OUTSTANDING LOANS

With respect to outstanding loans, the receiver has been required to comply with the borrowers' rights provisions of the Agricultural Credit Act of 1987. In doing so, the receiver has completed 120 individual restructures, involving debt with a total book value of approximately $25.7 million, and 144 reamortizations involving debt with a total book value of approximately $13.4 million. During this same period, the receiver has compromised 70 loans involving debt with a total book value of $30 million. In these compromises or settlements, the receiver has written off approximately $15 million of indebtedness. In the restructures, it has written off approximately $6.5 million. These restructures, compromises and reamortizations involve a total of 334 loans, with a total book value of approximately $69 million. The total amount of indebtedness written off was approximately $21.5 million. In approximately 95 percent of these restructures and reamortizations, interest rate concessions were made. There are approximately 26 additional restructures that have been approved by the receivership that are currently in the process of completion. This will bring the total restructures by the receiver under borrowers' rights, during the past 12 months, to 360. All of the restructures which have been approved by the receiver were done so on the basis of the least cost method of analysis.

CREDIT REVIEW COMMITTEE HEARINGS

During this same period, the receiver has conducted 110 Credit Review Committee hearings where the borrower has appealed a restructure denial. Four of these hearings have resulted in overruling of the initial denial.

POLICY CHANGE IN ASSISTANCE

Prior to May 20, 1988, it was the policy of the bank and the association not to assist borrowers in preparing a restructure proposal because of a perceived concern that such assistance could provide a basis for lender liability claims. Since the inception of the receivership, the receiver's policy has been to assist borrowers with their restructure proposal, when appropriate. The receiver now attempts to negotiate with borrowers before and after restructure proposals are submitted.

FORECLOSURES

The receiver has completed 225 foreclosures involving loans with a book value of approximately $46 million. In 111 of these foreclosures, the subject properties were acquired by the receivership at the foreclosure sale; in 39 of the foreclosures, the subject properties were acquired by the borrower at the foreclosure sale and in 38 of the foreclosures, the properties were sold to third parties at the foreclosure sale. In 4 of the foreclosures, the subject notes and mortgages were sold to other creditors. The receiver has acquired 33 properties through deed-in-lieu of foreclosure or bankruptcy court adjudication.

ACQUIRED PROPERTY

On May 20, 1988, the receivership had 120,829 acres of acquired property. Since then, the receiver has acquired an additional 42,749 acres, either through foreclosure, deed in lieu of foreclosure or bankruptcy court adjudication. The receiver has sold 132,682 acres of acquired properties for a total sales price of approximately $65 million, which was 89.7 percent of the total appraised value of the properties sold. The receivership currently has unsold acquired properties of 30,896 acres.

PURCHASED OR CONTRACTED ACRES FROM THE RECEIVERSHIP

Former borrower/owners have purchased or contracted to purchase from the receivership 28,125 acres, with a total appraised value of $9.9 million. A total of 46 borrower/owners repurchased all or a portion of the property that they had previously owned. The net result is that over 21 percent of the acreage sold by the receiver was purchased by previous borrower/owners.

RECEIVER CONTINUES TO WORK DILIGENTLY TO COMPLETE THE LIQUIDATION OF THE ASSETS AS EXPEDITIOUSLY AS POSSIBLE

The receiver continues to work diligently to complete the liquidation of the assets as expeditiously as possible. On June 15, 1989, the receiver submitted a second bid package to all of the Farm Credit System institutions soliciting bids on substantially all of the remaining loan assets of the receivership. If a satisfactory bid is received and the sale of those assets consummated, the receivership will only have approximately 400 loans remaining. This would permit significant downsizing of the receivership within the next few months.

RECEIVER IS DOUBTFUL THAT THERE WILL BE ANY VIABLE MARKET FOR THOSE REMAINING LOANS

The receiver is doubtful that there will be any viable market for those remaining loans. In addition, it may be necessary for the receivership to continue in order to have an entity available to compromise, settle or litigate to a conclusion the lawsuits involving some of the remaining loans and certain other legal actions filed by or against the receivership. Thus, while the size of the receivership may be greatly reduced in the near future, it may be necessary to maintain the receivership for some time in order to fully resolve the pending litigation. It is impossible to predict at this time how long that might take.

I would be glad to answer any questions that you might have, Senator.

[The prepared statement and attachments of Mr. Koch appear at the conclusion of the hearing.]

Senator CONRAD. We will finish with the panel and then come back to questions. Thank you very much for that testimony.

Next we will hear from Robert Vanwinkle, the Chairman of the Board of Directors of the Farm Credit Bank of Texas.

Welcome, and if you would proceed with your testimony, Mr. Vanwinkle, we will then have time to complete the panel and finish with questions.

STATEMENT OF ROBERT G. VANWINKLE, CHAIRMAN, BOARD OF DIRECTORS, FARM CREDIT BANK OF TEXAS, SULPHUR SPRINGS, TX

Mr. **Vanwinkle.** Thank you, Mr. Chairman. My name is Robert—or some people call me "Rip." In fact, most folks that know me call me that so you may, also. I would normally have slept through part of this hearing but it's been so interesting and so many remarks directed toward Texas, I did not sleep much during the previous session.

BACKGROUND

I am a dairy farmer from Sulphur Springs, Texas. I'm a member, owner of my system. I have been associated with the 10th Farm Credit District since the 1960's. We appreciate the opportunity to be here to discuss primarily the rights and restructuring of loans for distressed borrowers.

PHILOSOPHY OF THE FARM CREDIT BANK BOARD OF DIRECTORS CONCERNING WORKING WITH DISTRESSED BORROWERS

As a preamble to my comments, I would like to review briefly the philosophy of the Farm Credit Bank board of directors concerning working with distressed borrowers. Ever since the 10th Farm District was established in 1917, the bank has gone the extra mile to keep farmers on their land during tough economic times. Our history bears this out.

The Federal land bank, the forerunner of the Farm Credit Bank of Texas, has experienced very few foreclosures since the Depression years. It was not until 1984, when land values began to decline and a few borrowers caught hopelessly in the web of economic stress could not make their payments that the bank was forced to foreclose on loans. Even then, the number of foreclosures was minimal in relation to our total borrowers and amount of loans outstanding (attachment A).

All of the current members of our board of directors in Texas have been involved with the Farm Credit activities since the 1960's. The CEO of our bank, Mr. Rogge, seated beside me, was hired by the land bank in 1962. Our district leadership is very much a part of the 10th District's prevailing philosophy, where foreclosures are a last resort and *only* initiated after all other means of working with borrowers have failed.

TEXAS FARM CREDIT DISTRICT, DURING THE LAST ECONOMIC DOWNTURN AND TODAY, REMAINS FINANCIALLY VIABLE AND STRONG

Also, it is important in our initial comments that we try to make an awareness on the subcommittee's part that the Texas Farm Credit District, during the last economic downturn and today, remains financially viable and strong (attachment B). The board of directors and our bank management are committed to using this financial strength to the benefit of *all* of our borrowers. That is why, as this testimony will state, we work diligently with financially troubled borrowers to minimize their losses. We are pleased to report that, *so far,* we have not had the large numbers of delinquencies and nonaccrual loans as have other Farm Credit Districts. Our reports show that our delinquent and nonaccrual loans peaked on December 31, 1986, at a total of 1,500 loans (attachment C).

Less than 3.5 percent of our 44,000 loans were past due or distressed even at what we hope was the peak of our problems. This percent is *very* small in relation to distressed loans in the majority of other Farm Credit Districts. From 95 to 97 percent of our borrowers during the past several years of economic recession have continued to make their payments on time.

FEARFUL THAT ALL AGRICULTURALLY RELATED PROBLEMS HAVE NOT SURFACED IN TEXAS

We are fearful, however, that all agriculturally related problems have not surfaced in Texas. USDA's recent publication, "Agricultural Land Values and Markets," indicates that Texas' decline in land values has lagged most of the rest of the Nation by 3 to 4 years. According to USDA, the price of land per acre peaked in Texas in 1985. Many other States, particularly those in the Midwest, reached their peak in 1981 (attachment D).

Another interesting comparison is that, for example, in several States, land values peaked at between $1,500 to $2,000 per acre. In Texas, land at its peak reached $652 per acre. At least three points are noteworthy here. Each emphasizes the economic differences in Texas as compared to the other States.

NOTEWORTHY POINTS EMPHASIZING THE ECONOMIC DIFFERENCES IN TEXAS AS COMPARED TO THE OTHER STATES

The first point is that Texans produce on their $652 per acre land the same commodities at the same market price that other States produce on their $1,500 an acre land.

Second, a 50 percent drop in land values for properties that have peaked at $2,000 per acre has a much more absolute dollar impact than a 50 percent drop in land valued at $650 an acre. Pertinent also, is that land values in most of the rest of the country are increasing in value once again. Texas values continue to decline, with a further drop in value in 1988 of 3 percent, or down to $466 per acre.

In comparing economic conditions and, consequently, loan restructuring statistics in Texas with other Farm Credit districts, we may be comparing numbers, today, that are more appropriately compared with those of other districts of as long as 5 years ago. As indicated by USDA, Texas land values neither peaked as dramatically, nor thus far, have fallen as traumatically, as in many other States. And, we are hopeful they will not. We firmly believe that the bank's conservative approach to lending and its land appraisal process, through a benchmark value system that lagged inflation, contributed significantly to keep in check the inflationary pressures on Texas rural land.

We alone, however, cannot take full credit for the economic stability of Farm Credit in Texas. All of us and our borrowers and our members should receive credit for this also. Texas farmers, for the most part, are conservative. They are accustomed to one good crop-year out of maybe 3 or 4. They experience, as part of their way of life, drought, flood, hurricanes, hail and pestilence. Other than that, we have a lot of Baptists down there, too. As a result of predictable uncertainties, farmers in Texas do not tend to leverage themselves as highly as farmers in areas where good crop-years annually are more common.

Another very unique and different part of the Texas agricultural economy concerns our homestead laws. The State of Texas has always assured the individual the right to his home place. 200 acres carved out of a first lien makes a significant difference in the amount of money loaned on a property and tend to make both lender and borrower more conservative.

Mr. Chairman, economic conditions, agricultural lending—all are very different in Texas from those in many other States. When comparing our district with others, these differences, we feel, certainly should be considered.

LOOK BEHIND THE STATISTICS THAT ARE PUBLISHED IN THE NATIONAL FARM CREDIT SYSTEM REPORTS

Another important point concerns a look behind the statistics that are published in the National Farm Credit System reports. The reporting process dictates that only those loans on which a monetary concession is provided are to be reported. In other words, under the Financial Accounting Standards Board, Rule 15, only restructured loans that receive a forgiveness of debt or an interest rate concession are reported. Consequently, most of our loan servicing actions are never reported to the regulator and, consequently, they never appear on the call reports.

In Texas, our work with distressed borrowers invokes a progressive process that includes: informal forbearances, payment date changes, reamortizations, refinancings and partial releases.

From 1984 through 1987, prior to the Agricultural Credit Act of 1987, the Farm Credit Bank of Texas' progressive loan servicing procedures helped many economically distressed borrowers. Much of what was required by the act was already a part of our standard procedure when the act became law. For example, as mentioned previously, the bank's delinquent and nonaccrual loans peaked at 1,500 at yearend 1986. Yet, during 1987, the bank foreclosed on only 94 loans. The remaining were handled through other "work out" procedures such as those mentioned previously, or were still in some stage of forbearance.

In addition, during 1988 and through March of 1989, the bank granted forbearance on 2,484 long-term mortgage loans. This means that approximately 5 percent of our borrowers were given more time to make their payments or had their original loan restructured without monetary concessions by the lender. These loans, because of the reporting definitions, are not reflected in the reports to our regulators; however, we do believe they are reflective of our desire to work with economically distressed borrowers and are important to this testimony.

SPECIFIC ISSUES ON DISTRESSED LOAN RESTRUCTURING

Now, to some more specific issues on distressed loan restructuring.

When the 1987 act became effective on January 6, 1988, the Farm Credit Bank of Texas imposed a general moratorium on foreclosures, pending a consideration of borrowers' rights required under the new act (attachment E). This provided the opportunity for our borrowers in the foreclosure pipeline to be granted their borrower rights. The first notifications to distressed borrowers of their rights under the Texas District's Distressed Loan Restructuring Policy were mailed on March 1, 1989.

Also, the bank immediately notified all previous owners of presently held bank-acquired property of their rights of first refusal (attachment F).

A total of 791 distressed borrowers were identified under the bank's loan restructuring process and the Agricultural Credit Act of 1987. Each was sent a letter informing him of his borrowers' rights and giving him an opportunity to submit a plan that would return his operation to viability. Of the 791 notified, 255 borrowers submitted restructuring plans.

The Farm Credit Bank of Texas approved 190 of the 255 plans submitted for restructuring or almost 75 percent of the applications. Only 65, or 25 percent of the restructuring plans, were denied. Of the 255 borrowers who submitted a plan, only 23 requested any type of monetary concession.

Mr. Chairman, I mention this at this time because, as stated earlier in my testimony, only concessionary loans are reported as restructured loans. The report indicates that the Farm Credit Bank of Texas formally restructured only 12 borrower loans in 1988. Under the FASB rules, this is true. But important to understand is that of the 23 requests for monetary concession, 12, or more than one-half, were granted. Almost 94 percent of the borrowers who sent in restructure plans did not ask for monetary concession. They did ask for extra time with their loan payments, a reamortization or other type of formal or informal forbearance. Many of the 255 respondents stated in their applications that they did not want to be restructured or have any principal, interest or penalties forgiven (attachment G). In many cases, the borrowers had identified their own problems and were pursuing other alternatives for meeting their debt obligations.

The following comments address specific criticisms that have been directed at the Texas Farm Credit Bank.

One of those concerning the bank's method of determining appraisal value——

Senator **Conrad**. Let me interrupt at this point and just ask you, are you close to completion?

Mr. **Vanwinkle**. I'm pretty close. This is important and I will answer questions about appraisal values or make a point here that we, I guess, have been criticized for falsely inflating land prices in order that restructuring might not be granted. The point is that I have information here that says of those loans that we have foreclosed on, that we have sold, that they have sold more than our recovery value stated. So I think that would back that up.

If we are short on time, I will respectfully close and you can ask questions if you would like.

[The prepared statement and attachments of Mr. Vanwinkle appear at the conclusion of the hearing.]

Senator CONRAD. We will go next to Mr. Haslebacher.

Mr. HASLEBACHER. Yes, Mr. Chairman, that is correct.

STATEMENT OF AL HASLEBACHER, PRESIDENT, SPOKANE DISTRICT FARM CREDIT COUNCIL, SPOKANE, WA

ATTACHMENTS SHOW OUR EFFORTS IN THE LOAN RESTRUCTURING AREA

Mr. HASLEBACHER. In the essence of time, I will paraphrase my testimony, noting that I have four attachments to my prepared testimony that you will want to take a look at that show some of our efforts in the loan restructuring area, in our cost reduction area, office closures and staff reductions, and the nonaccrual trends. Note that we have reduced nonaccruals from the peak where we were at about $800 million, or 22 percent of our loan volume to presently about 12.9 percent at $360 million, indicating good progress in collection or correction. Because it is a combination, not all loans can be restructured; some have to go the collection route. Good progress has been made in improving conditions in the district, and I think those charts are very important and I hope you will take a look at those.

SEVERAL COMMENTS IN GENERAL TERMS

I want to make several comments in general terms here, partly discussing some of the things that were mentioned earlier in the day. I think it's important because we hear it out in our district all the time, "We had a $4 billion bailout in the Farm Credit System. Where did that money go? How come you're not reducing our interest rate? How come you're not using it to restructure our loans?"

As you know, the truth is there were no dollars, Federal dollars, made available for that purpose whatsoever. Federal financial assistance has to be borrowed and repaid. But there is the perception on the part of many distressed borrowers that there was a fund of money made available for the purpose of writing down loans or lowering interest rates when, in fact, the Spokane District has written off in loan concessions $99.6 million, say $100 million in the last several years, since 1987 sometime, about 1,200 loans restructured. This is of the monetary concession type. We also had large numbers of ream's and other concessions that were not monetary.

But that money (restructuring concessions) only comes from the paying stockholders, and I think it is important that all of us in the room involved in agricultural credit remember that the so-called bailout was not a bailout. It was a loan to the System that will be fully repaid with interest and will not cost the taxpayers a dime. The System actually put up $177 million, to guarantee that this would be the case, in a separate fund with that assistance corporation. So that is a fact that sometimes gets lost.

On the least cost approach to loan restructuring, that seems to be quite an issue with some of our distressed borrowers, saying that they can't figure the proper restructuring proposal to submit. We have had many meetings with advocacy groups in our district and eventually we seem to get our point across, that point being that the borrower, who must act in good faith, has the obligation to repay the maximum and not to seek the maximum write-down.

We give out our least cost analysis figures after the borrower submits his maximum repayment proposal. In other words, I think you would agree and I think any person would agree, because most of these advocacy groups eventually do agree that a borrower, yes, does have the responsibility to give his best effort at repaying the maximum he can, and whatever is written down is a secondary matter.

Fred Colver here, who is with me will really delve into loan restructuring. He has sat on 60 Credit Review Committee hearings and will elaborate a little further. I don't want to steal his thunder but since we are talking about that point, the average write-down on a concession on these 1,200 loans has been about 29 percent of the amount of the loan outstanding. That is common knowledge throughout the district, and other costs of collections are also common knowledge.

I just want to make the point that somehow we have to look at the fact that it's the other paying stockholders where this money comes from when the loan is written down. We're not arguing about the loss; the loss was there before it was formally recognized, and we all know that. But it doesn't come out of Federal dollars; it comes out of the surplus, if any, and then out of the value of the borrowers' stock. And when there is no surplus, then the value of the stock of that institution, and its paying stockholders, is reduced. That is an important point I just wanted to stress.

We have had a lot of congressional inquiry in our district in 1988 and it has dropped off extremely markedly from 151 cases in 1988 to 18 through June 15 of this year, which seem to indicate that the problem has diminished markedly as far as the perception. But we acknowledge that there has been—like 1988, substantial criticism of our dealings with our borrowers. We think that our people are really on the side of the farmer and the stockholder, and working in good faith.

We've heard the suggestion of an arbitrator and we have actually, in several cases, offered to the Congressman involved, "You or your staff, take a look at the facts. We will let you be the judge. If you think we have not done the honest, best job of making this tough, balanced decision between doing it at the least cost to the paying stockholders, you tell us what you think we should do and we will live with it." So far, no one has wanted to take us up on that but we, in good faith, have said that. We really think our staff is making a solid, honest effort to do that.

I see the red light is on, and I will just note that the hearing was intended to cover implementation and I have 10 points of things that the Spokane District has done in implementing the 1987 Ag Credit Act.

One last point, in spite of the troubles in the Spokane District, we are part of the good guys. On a net cash basis, the Spokane District is a $61 million net contributor to System self-help. There has been money in-flow, out-flow and different things, and that is a significant drain on the surplus and resources of the System, separate entirely from loan restructuring.

We think we're making excellent progress. There have been some changes. And I would want you to know, as part of the public record, that part of the changes that the Board announced at the time they announced the management change, was not only did we become eligible to apply for Federal assistance, in which we hope to buy back the high cost bonds; but with the reduction in the prime rate our Board announced a half a percent interest rate reduction on all outstanding variable rate loans, PCA and long term. So we're pretty optimistic that we are making good progress in the district and that we are operating on a good, sound basis.

I know you would be interested in hearing from our farmer director, Mr. Colver, so with that I will close my testimony.

[The prepared statement and attachments of Mr. Haslebacher appear at the conclusion of the hearing.]

Senator CONRAD. Thank you very much.

We next will turn to Mr. Colver, a member of the board of directors. Welcome, Fred.

STATEMENT OF FRED COLVER, MEMBER OF THE INTERSTATE FEDERAL LAND BANK ASSOCIATION, 12TH FARM CREDIT DISTRICT, LEWISTOWN, MT

BACKGROUND

Mr. COLVER. I come before you today representing the 12th District, headquartered in Spokane, Washington.

My name is Fred Colver, my home is in Lewistown, Montana, where, between my son and myself, we own and operate a 2,400 acre small grain, hay and cattle ranch. We also lease four other small neighboring farms. We run about 200 head of cows, with half of them being a registered Gelbvieh herd that we sell through our own annual spring production sale.

I have been a borrower of Farm Credit for 30 years. I was a board member of the Federal land bank for 9 years through our local service center in Lewistown, Montana. At the present time, I am a member of the Interstate Federal land bank board of directors in Spokane. I have been there for a year and a half.

HISTORY ABOUT FARM CREDIT AND UPDATE YOU WITH OUR PRESENT ROLE

Today, I would like to give a little bit of history about Farm Credit and update you with our present role in dealing with Farm Credit borrowers.

Through the 1960's and 1970's, when agriculture was on quite a roll, we had good average prices, we had good crops, cost of operations were right. Everything went along pretty smooth until we got along to about the 1982 and 1983 and we had a few indications coming in from mainly the South and the Midwest, other Farm

Credit districts. They started to have problems with the repayments, to the point that their reserves were being depleted.

Being the cooperative that Farm Credit Services is, we in the 12th District were asked to help out financially and give support to the other districts. At that time, we gave about $100 million. In the West, we're always a little behind the economic changes. When our time came for infusion of moneys to aid us—it was pretty empty by the time we asked for our financing—there wasn't any left.

At the peak of our problems in 1986, we were carrying approximately $800 million in nonaccrual loans which amounted to 22 percent of our loan portfolio. If you put that money out at 10 percent interest, that amounted to about $80 million a year in interest alone that we weren't receiving.

At that time, we formed what we call the Special Credit Division. We took our best personnel and gave them the task of collecting these delinquent loans.

In December of 1987, when Congress passed the Agricultural Credit Act, new direction was given as to how we were to handle the many nonaccrual loans.

This established the borrower rights that we are operating under at the present time, and closely paralleled our district's restructuring policy already in effect. These borrowers' rights allow the borrower to meet with a committee, the majority of whom are his peers, if the loan officer and the borrower cannot reach an acceptable settlement. That committee can review the information objectively and assure that the law and policy are being followed.

The borrowers usually have a negotiator with them, an attorney, and sometimes an accountant and bookkeeper.

From January 1, 1988, to October 14, 1988, I participated in about 60 of these reviews of eastern Montana. Since October 14, our regulator, the FCA, determined that a board member from the prime lender, which is the Farm Credit Bank Board, had to sit on the committee instead of the Interstate directors, such as myself.

CREDIT OFFICERS BENT OVER BACKWARD TO ACCOMMODATE THESE INDIVIDUALS IN RESTRUCTURING THEIR LOANS

During the time that I served on these Credit Committees, our credit officers bent over backward to accommodate these individuals in restructuring their loans. These loans are restructured with three main things in mind. Repayment must be feasible from a cash-flow standpoint; our stockholders are to be protected from further loss exposure; and the restructuring plan is the least-cost alternative. After all, at the present time, we still have over 90 percent of our borrowers that have good viable loans and are paying our going rate of interest. We have to protect them also. When I mentioned least cost, if we have to get into litigation or foreclosure, this can cost our stockholders if we have an undersecured loan. It then makes sense to restructure, with a cash payment up front or additional collateral, at an amount with a net present value greater than the litigation alternative. Also, we expect to then have a paying, viable loan.

PROBLEM IN RESTRUCTURING

One of the problems we have had with the restructuring of these loans is that sometimes the individual loves to go back to his neighbors and tell them how he took Farm Credit to the cleaners. For instance, we have forgiven part of the loan, reamortized the rest, and given the individual a 3- to 5-year loan at 8 percent, and then it will return to a normal rate of interest for the remaining term of our loan. His neighbor, who is also our borrower, will come to our local service center and tell us to give him a chance at that place with the going rate of interest, and he will make it pay off. I'm sure this neighbor could probably get this done because he has been a good manager, he has held his own place together through the tough times. I don't mean to imply that all the loans restructured were individuals that weren't good managers. A good percentage of the loans, especially from eastern Montana, which I'm most familiar with, were involved with circumstances beyond their control, such as 3- to 4-year drought, and anything the drought didn't take, the grasshoppers came in and cleaned what was left over. I feel sorry for these people, and we will help them as much as we can and as much as possible.

99 PERCENT OF THE INDIVIDUALS WE WORK WITH ARE COOPERATIVE

About 1 percent of the individuals are the only ones that we have our problems with. This means that 99 percent of the individuals we work with are cooperative, they would like nothing better than to get out of the predicament they're in or pay their loan, as agreed. We will work with these people as much as we can, and we have been working with our troubled accounts.

I would like to give you a few figures, if you give me the time, if you don't mind, Mr. Chairman.

Senator CONRAD. I tell you, we have now gone over our allotted time and I have other appointments that I am committed to. So I think what we will do is allow you to enter those into the record and we will have those available then for the full committee. If you have any concluding statement, we would be glad to take that.

Mr. COLVER. I believe that attachment 1 to SDFCC President Al Haslebacher's testimony is strong evidence that the 12th District is doing an excellent job in the loan restructuring area.

I wanted to mention—and this is just one figure that was in his papers—we have dropped the congressional inquiries. We had 157 in 1988. As of June of this year, we have only 18. So we are making progress there.

Mr. Chairman, I thank you for the opportunity to speak to you here today. We do have this prepared testimony. I do want you to read it over. I have left out some pretty important paragraphs here that I would have liked to have added to it. It is one more page is what it amounts to. I do thank you at this time.

[The prepared statement of Mr. Colver appears at the conclusion of the hearing.]

Senator CONRAD. We will be glad to review that.

I want to, at this point, indicate our appreciation to all of those who have appeared here today. We very much appreciate your participation. It is very helpful to us to have this work done.

Is there a willingness to respond to written questions that we might have as follow up? Is there any problem with that, if we have any follow-up questions? We will leave the record open for a week for other of our colleagues to submit further written questions so that you can have a chance to respond to those, as well.

Again, thank you very much for your participation. It has been very helpful to this subcommittee and we thank you very much.

With that, this subcommittee hearing will be adjourned.

[Whereupon, at 4:12 p.m., the subcommittee recessed, to reconvene at 2:36 p.m., Tuesday, August 1, 1989, in room SR-332, Russell Senate Office Building.]

[Material submitted for inclusion in the record follows:]

APPENDIX

PREPARED STATEMENT OF MARVIN R. DUNCAN, ACTING CHAIRMAN, FARM CREDIT ADMINISTRATION, MCLEAN, VA

Mr. Chairman, I am Marvin Duncan, acting chairman of the Farm Credit Administration Board. I have held that position since November 11, 1988, when the chairman resigned to enter the private sector. I have been the sole member of the board since January 6, 1989, when the third member also resigned.

The primary responsibility of the Farm Credit Administration (FCA) is to ensure that the institutions under its jurisdiction operate in compliance with Federal law and regulations and to promote safe and sound banking practices in those institutions.

To that end, the FCA conducts examinations of all Farm Credit System institutions. Upon completion of an examination, and in addition to an oral and written report to the institution's board of directors, each institution is assigned a rating on a scale of 1 to 5, with 1 being the best and 5 being the worst. The agency uses a CAMEL approach to these ratings, evaluating capital, assets, management, earnings, and liquidity. Of 296 institutions examined in 1988, 10 were rated 1, 93 were rated 2, 59 were rated 3, 67 were rated 4, and 67 were rated 5.

Special examinations of compliance with the borrower rights provisions of the Agricultural Credit Act of 1987 were conducted in the St. Louis and Omaha Farm Credit Districts and examinations with special emphasis on those provisions were conducted in the St. Paul, Spokane, and Sacramento Farm Credit Districts. In that regard, the Chief Examiner has issued three *Examination Bulletins* to all examination staff directing that compliance with the borrower rights provisions of the applicable law and FCA regulations be a part of every examination plan and detailing procedures to be followed in implementing those plans.

While our examinations have generally found compliance with the statute in the area of borrower rights, the FCA staff is currently addressing several questions that have been raised by the institutions themselves.

- Is a borrower who submits a restructuring plan more than 45 days after being notified that his or her loan is distressed and that it may be a candidate for restructuring entitled to have that plan considered pursuant to the requirements of the act? One court has ruled that by failing to apply for loan restructuring within 45 days of such notification, the borrower "waived any rights to loan restructuring consideration."
- Can an institution offer a lower interest rate to borrowers as an incentive to have their loans pooled in the secondary market and thereby waive borrower rights?
- If a borrower chooses to convert an existing loan to a fixed or adjustable rate loan, is the institution required to provide the same disclosure information that is required for a new loan, including the basis on which interest rates can be adjusted?
- How many times must a previous owner be offered the right of first refusal to purchase property acquired by an institution through foreclosure or voluntary conveyance?
- Can an institution negotiate a waiver of the right of first refusal during the restructuring process?
- Can an institution offer a borrower a preferential interest rate as an incentive to convert protected stock to at-risk stock?

The Farm Credit Administration will respond to these questions as quickly as possible.

Before adopting the final regulations on the expanded borrower rights provisions of the Agricultural Credit Act of 1987 on September 6, 1988, the FCA held a public hearing on the subject. In considering the final regulations, we reviewed more than 300 comments on the proposed regulations.

We consider the implementation of the borrower rights provisions of the statute extremely important, particularly the provisions dealing with the restructuring of distressed loans. From the standpoint of a Federal regulator, consideration for loan restructuring is the law. Equally significant, however, is the fact that the successful restructuring of a loan turns a nonearning asset into an earning asset. This may benefit the institution, and, of course, provides the borrower another opportunity to successfully meet the terms of the loan agreement.

There have been approximately 10 lawsuits regarding borrower rights naming the FCA as a party. One of these suits was filed before the FCA issued final regulations implementing the statutory requirements, with the rest being filed after the final regulations were issued. The claims against the FCA generally sought an order from the court declaring that the FCA had not taken the necessary steps to directly restructure the borrower's loan or failed to ensure that the institution acted in accordance with applicable law and regulations. In each case, the FCA filed a Motion to Dismiss on the grounds that:

(1) The borrower's claims lie against the institution and not the FCA;

(2) There is no statutory authority for the FCA to grant the redress sought by the borrower; and

(3) The FCA's authority to determine an institution's compliance with the restructuring provisions of the statute lies in the FCA's enforcement authorities, which the borrowers had not challenged.

In each case where the court has reached a decision, the FCA's motion to dismiss has been granted. In three cases, the motion is currently pending.

There have been other borrower rights litigation in Federal and State courts to which the FCA has not been a party. It is not possible to maintain a file on each of these cases because many in State courts are not reported. Of those that have come to our attention, however, the Farm Credit institutions have generally been found to be in compliance with the statute and regulations.

During the year ended December 31, 1988, Farm Credit System institutions reported having restructured 11,493 loans totaling nearly $2.0 billion. These restructured loans were loans on which monetary concessions have been granted borrowers. This classification does not include loans on which monetary concessions have been made on loans that remain in nonaccrual status, nor does it include loans on which repayment extensions or reamortization concessions have been granted to borrowers.

FCA staff participated in a number of other activities resulting from the Agricultural Credit Act of 1987. Significant staff resources are devoted to analyzing and evaluating the quality of required financial disclosure information provided stockholders of institutions relative to 67 merger requests received by the agency during the year. Considerable staff time was also required to draft new regulations and revise existing regulations, activities that were necessitated by the statute.

As a result of its examinations, the agency executed 71 enforcement documents with banks and associations under its jurisdiction during the period from January 1, 1988, through May 31, 1989. Twenty-seven were cease and desist orders and 26 were formal agreements. These enforcement documents covered institutions holding $25.0 billion of the Farm Credit System's total assets, nearly half the System's loans and loan-related assets. The FCA also placed conditions of merger on 18 institutions. These conditions of merger were necessary because in each case one or more of the merging institutions was operating under an existing enforcement document.

In implementing the Agricultural Credit Act of 1987, the agency took a number of other important actions.

- Resources have been devoted to formulating a plan for the organization of the Farm Credit System Insurance Corporation. An outline and work plan have been developed providing for the identification of issues, corporate organization, functional organization, staffing, development of policies and procedures, and the promulgation of regulations. Implementation of the plan will begin soon and will accelerate throughout the summer and fall.
- On January 12, 1988, the FCA chartered the Farm Credit System Financial Assistance Corporation and the Farm Credit System Assistance Board.
- On May 5, 1988, approval was given to a plan that resulted in the merger of 11 of the 13 Banks for Cooperatives effective January 1, 1989.
- On September 28, 1988, final regulations were adopted that call for a minimum ratio of permanent capital to risk-adjusted assets of 7 percent to be achieved by 1993.

- On October 4, 1988, final regulations were adopted that deal with the use of regulatory accounting practices.
- On July 6, 1988, the Federal land banks and Federal Intermediate Credit Banks in 11 of the 12 Farm Credit Districts merged to form Farm Credit Banks as mandated by the statute. The Federal Land Bank of Jackson did not merge with the Federal Intermediate Credit Bank of Jackson because the former was placed in receivership on May 20, 1988.

Subsequently, a number of voluntary mergers have occurred among Federal Land Bank Associations (FLBA's) and Production Credit Associations (PCA's). At the end of 1987, there were 233 FLBA's and 155 PCA's. On June 1 of this year, there were 141 FLBA's and 85 PCA's. Through mergers of unlike associations permitted by the statute, 39 Agricultural Credit Associations (ACA's) were formed. The ACA's can make direct long-, intermediate-, and short-term loans. In addition, two Federal Land Credit Associations have been created. They are simply FLBA's that now have direct lending authority. The agency currently has under active consideration a number of requests to reverse previous mergers. Some territorial changes have also been requested and are under study. I would like to make it clear that the agency does not influence this voluntary activity one way or the other. Our chief concern is that what is being proposed is authorized by the statute and that stockholders are provided with sufficient financial information on which to make informed decisions.

There are currently 10 Production Credit Associations, 2 Federal Land Bank Associations, and 1 Federal land bank in liquidation. Liquidation of three other Production Credit Associations has been completed and their charters canceled. I would like to update the subcommittee on the largest of the institutions in liquidation, the Federal Land Bank of Jackson.

The Federal Land Bank of Jackson and the Federal Land Bank Association of Jackson with its 90 service centers in Alabama, Louisiana, and Mississippi were placed in receivership on May 20, 1988.

The bank and association had experienced critical credit and financial problems beginning early in 1986. The bank reported insolvency on December 31, 1986, but continued operations by using regulatory accounting practices authorized by the Farm Credit Act Amendments of 1986. The bank had received initial financial assistance from the Farm Credit System Capital Corporation and later received interim assistance from the Farm Credit System Financial Assistance Corporation as authorized by the Farm Credit System Assistance Board.

In December 1987, the bank ceased the retirement of borrower-owned capital stock and stopped accepting applications for new loans. Prior to the appointment of a receiver, the bank was losing approximately $4.7 million a month. Loan volume had dropped by almost half, from $3.2 billion in 1984 to approximately $1.7 billion in 1987. At the time of the closing, the bank and association had total assets of slightly more than $1.9 billion and were serving some 21,000 borrowers in the three States.

The Farm Credit System Assistance Board rejected a request for further assistance in May 1988 and requested the Farm Credit Administration Board to appoint a receiver. Thereafter, following a determination that grounds for the appointment of a receiver existed the FCA Board appointed a receiver and placed the institutions in liquidation in accordance with 12 U.S.C. 2183.

Pursuant to the FCA order, the receiver took possession of the assets of both institutions. The mission of the receiver is to expeditiously dispose of the assets while maximizing the return to shareholders and minimizing the financial exposure of other Farm Credit institutions and the general public.

The FCA directed the receiver to offer the loan assets to other Farm Credit System institutions before attempting to sell them to others. Meanwhile, the FCA approved temporary service agreements between the receiver and the Farm Credit Banks of Columbia and Texas to restore long-term agricultural real estate credit services to the territory.

To facilitate the sale of assets, the receiver allowed Farm Credit System institutions to review relevant data regarding the assets from July 5, 1988, to October 4, 1988. This made it possible for interested institutions to make a more informed evaluation of the assets before formulating their respective bids.

On October 31, 1988, the receiver delivered to the interested institutions of the Farm Credit System an offering of loan assets for sale comprised of more than 18,000 loans with balances totaling in excess of $1.4 billion. This offering represented more than 75 percent of all assets of the receivership. On December 7, 1988, three offers were delivered to the receiver. The receiver analyzed the bids and submitted its recommendation to the FCA for approval. The FCA Board analyzed the receiver's recommendation based on an independent analysis by FCA staff. On December 21, 1988, the FCA Board approved the receiver's recommendation that the bid offered by the Farm Credit Bank of Texas be accepted. The accepted bid was for some 16,300 loans with a sale price of $854 million. The FCA Board also approved an amendment to the charter of the Farm Credit Bank of Texas to include the authority to provide long-term credit service in the States of Alabama, Louisiana, and Mississippi. The actual transfer of the assets was concluded early this year.

On April 14, 1989, auctions began of the acquired property and buildings of the institutions in receivership. The receiver conducted seven auctions, with the final auction held on May 6, 1989.

Significant progress has been made regarding the receivership. Loans and acquired properties have been reduced by 69 percent and total liabilities by 57 percent. Fixed assets have been substantially reduced. All field offices have been sold or are under contract for sale. The Jackson building, in which the receiver holds a one-third interest, and its fixtures and furnishings, is subject to litigation and will be disposed of at the earliest practicable date. Noninterest operating expenses have been reduced by 38 percent. And the number of employees has been reduced by 43 percent. In short, Mr. Chairman, the major objectives of the receivership that were established by the FCA Board in September of 1988 are on or ahead of schedule.

However, several steps or concerns still remain. These include:

- The second round of sales of the remaining assets, which were offered on June 15;
- The auctioning of the remaining acquired property;
- The receivership's collateral position;
- The settlement of claims and lawsuits against the receivership;
- Disposal of any remaining assets and liabilities of the receiver; and
- Concluding the receivership and the resolution of its final cost.

I have attached to my testimony the March 31, 1989, status report of the receivership, which lists the six objectives of the receivership and the progress that has been made on each of those objectives.

Let me conclude with a brief commentary on the financial condition and performance of the Farm Credit System.

- Improvements in farm income, rising land values, stronger agricultural exports, debt reductions, and significant economic and financial assistance strengthened the farm economy in 1988. These developments, together with implementation of the Agricultural Credit Act of 1987, contributed to the improved performance of many Farm Credit institutions resulting in the return to overall profitability for the institutions as a whole.

On a cautionary note, however, almost all of the net earnings were accounted for by reversals in loan loss provisions. Interest income, however, was large enough to cover interest costs and other expenses by a small margin. In addition, most institutions experienced a stabilization or improvement in the quality of the credit in their loan portfolios. These favorable trends must continue unimpeded over the next few years if the banks and associations are to achieve a return to financial stability.

Though the outlook for Farm Credit institutions is generally brighter, the picture is clouded somewhat by the one-time nature of some of the events of the past year, as well as by the uncertainty surrounding the new secondary market for farm real estate mortgages.

The bulk of 1988 profits stemmed from a reversal of $681 million in loan loss provisions and a gain of $69 million from the disposition of acquired property. Part of this income was offset by an extraordinary charge related to the restructuring of high cost debt by three Farm Credit Banks and losses from the Federal Land Bank of Jackson in Receivership. Because these adjustments reflect unusual events that occurred in 1988, future income will depend increasingly on the ability of the banks and associations to improve their operating margins.

The recent improvements in net interest income must continue if the banks and associations are to rebuild their capital and meet minimum regulatory standards. Although credit quality improved in 1988 as a result of loan restructurings and a stronger farm economy, total high-risk loans and acquired property were 14 percent of total assets at the end of the year, which is still an unacceptably high level. The farm economy, the advent of the Federal Farm Mortgage Corporation, the task of rebuilding capital, and the eventual repayment of financial assistance, are all factors the banks and associations face in the future. The road to recovery will require effective planning, strong management, and careful attention to operating efficiency, possibly including the implementation of cost saving liaisons and the elimination of duplicative or nonproductive activities.

Finally, Mr. Chairman, I would like to report that on June 14 we held a day-long hearing on the prospect of Farm Credit institutions offering additional financially related services. Some 36 witnesses testified.

I will be pleased to respond to any questions the subcommittee may have regarding the regulatory, examination, or enforcement activities of the Farm Credit Administration.

[Status of Receivership Objectives as of March 31, 1989, follow:]

FEDERAL LAND BANK OF JACKSON, FEDERAL LAND BANK ASSOCIATION OF JACKSON IN RECEIVERSHIP

MISSION STATEMENT of the Receiver: Expeditiously dispose of the receivership estate while maximizing the return to shareholders, thus minimizing the financial exposure of the remaining members of the Farm Credit System and the general public.

RECEIVERSHIP OBJECTIVES [1]

Objective No. 1: Loans and Acquired Property. Dispose of the maximum amount of loan-related assets, with the assignment of debt, at the highest price as expeditiously as possible.

Original Target: 33 percent downsizing by 2/28/89, 66 by 8/30/89.

Revised Target: 90 percent downsizing by 5/20/90.[2]

Objective No. 2: Fixed Assets. Dispose of fixed assets as quickly as possible through transfer to an institution(s) acquiring territory or in the open market.

Original Target: Disposition of most major fixed assets by 5/31/89.

Revised Target: Disposition of 95 percent of all fixed assets by 5/20/90.

Objective No. 3: Operations. Develop policies to provide for the efficient operation of the receivership to provide maximum return within the confines of safe and sound operations and protection of asset values.

Original Target: Policies and procedures formulated and implemented by 11/15/88.

Revised Target: None.

Objective No. 4: Budget Process. Minimize noninterest expense commensurate with the orderly liquidation of assets and winding down the affairs of the FLB/FLBA.

Original Target: Reduce operating expenses 40 percent by 4/30/89.

Revised Target: Reduce operating expenses 75 percent by 5/20/90.

Objective No. 5: Personnel. Reduce human resources needs through consolidation and disposition of assets while providing adequate staff to manage the ongoing receivership estate.

Original Target: 40 percent reduction in staff by 4/30/89.

Revised Target: 75 percent reduction in staff by 5/20/90.

Objective No. 6: Legal Matters.

Original Target: Reduce outstanding caseload as of 9/30/88 20 percent by 3/31/89.

FEDERAL LAND BANK OF JACKSON, FEDERAL LAND BANK ASSOCIATION OF JACKSON IN RECEIVERSHIP

STATUS OF RECEIVERSHIP OBJECTIVES AS OF MARCH 31, 1989

OBJECTIVE No. 1: DISPOSE OF LOAN RELATED ASSETS

Accomplishments: Original targets have been exceeded. Loans and acquired property have been reduced by 69 percent since 5/20/88. The reduction percentage does not include the "put back" feature relating to the asset sale to the Texas FLB, or the acquired property auctions in Louisiana and Mississippi during April and early May. The Receivership has the opportunity to downsize the loan-related assets by as much as 90 percent by 6/30/89.

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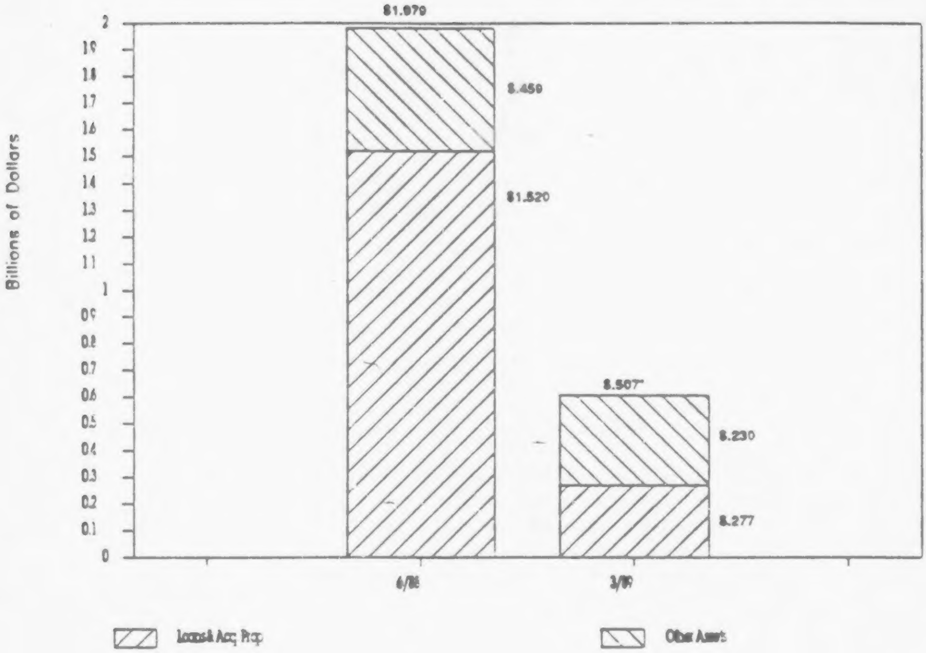
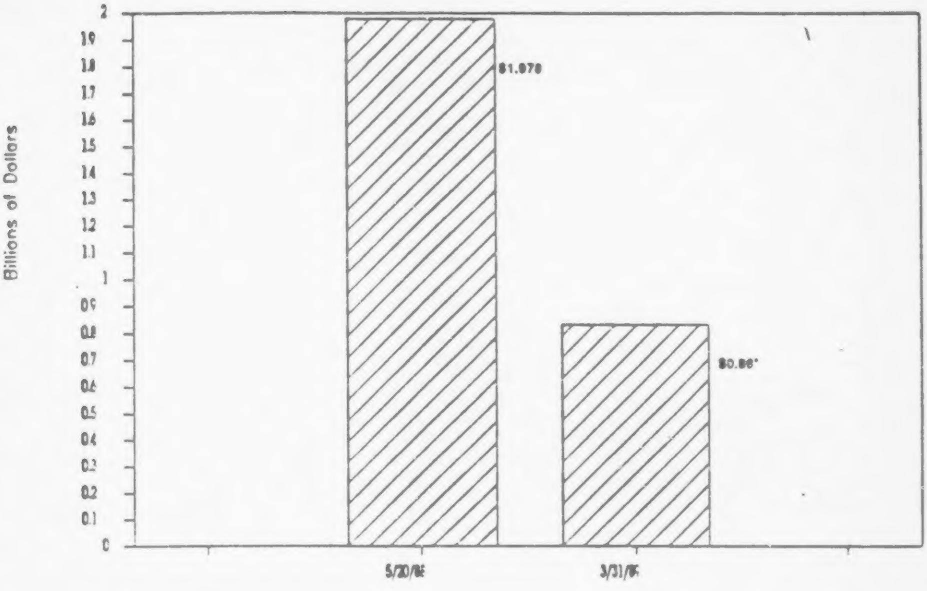
[1] Approved by the Farm Credit Administration Board on September 28, 1988.

[2] Revised targets for applicable objectives were submitted by the Receiver.



* Liquidating value

Total liabilities have been reduced 57 percent commensurate with the disposition of assets.



* Liquidating value

OBJECTIVE NO. 2: REDUCED FIXED ASSETS

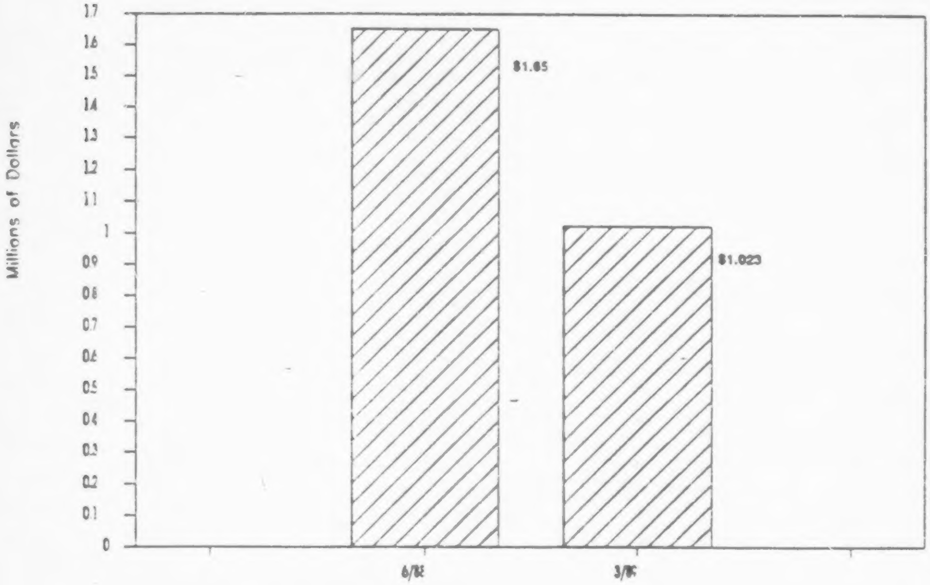
Accomplishments: Original target has been met. Fixed assets (offices, furniture, fixtures, and equipment) have been reduced 99+ percent by number. All offices (90 in number) and related furniture, fixtures, and equipment, except for the Jackson building and related furniture, have been disposed of. Sale of the Jackson building is being delayed because of the effects collateral sharing litigation is having on the joint ownership of the property. Revised target will not be reached until the Receivership's share of the Jackson building can be sold.

OBJECTIVE NO. 3: DEVELOP OPERATIONAL POLICIES

Accomplishments: A full range of policies and procedures was developed and implemented by 11/15/88. Compliance with those policies and procedures was achieved by 3/31/89. Updates are being implemented as needed.

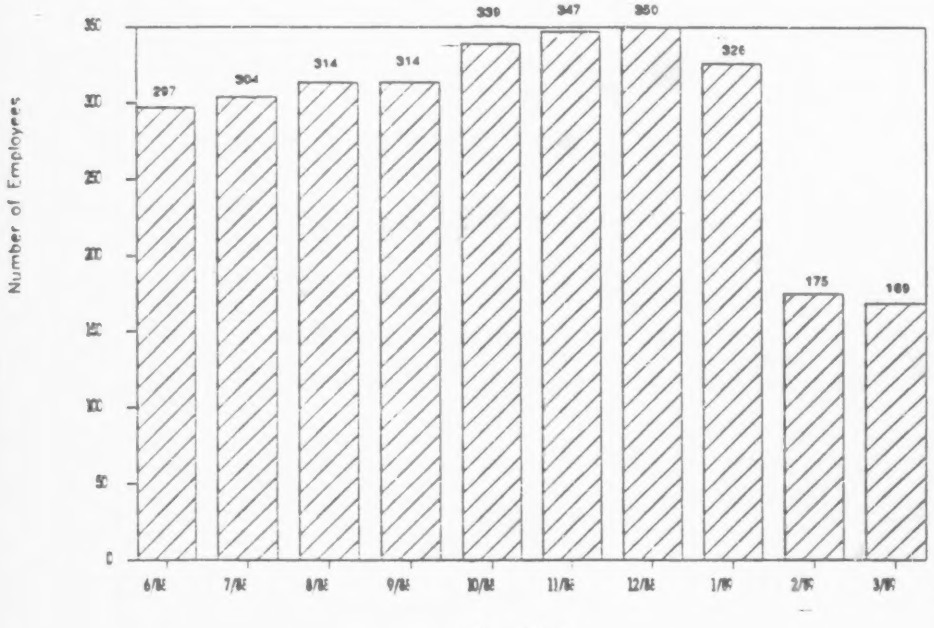
OBJECTIVE NO. 4: REDUCE NONINTEREST OPERATING EXPENSES

Accomplishments: Operating expenses, exclusive of interest costs, have been pared in line with reduction in assets, and when compared to those same expenses for the organization prior to its liquidation. Noninterest operating expenses have been reduced 38 percent. Both the original and revised targets are achievable.



OBJECTIVE NO. 5: REDUCE PERSONNEL

Accomplishments: Original target has been met. Personnel have been reduced 43 percent, 128 in number. Receivership staff stands at 169, down 43 percent from 297 who were onboard immediately subsequent to the liquidation. The next substantive reduction should occur after the proposed loan asset sale.



OBJECTIVE No. 6: REDUCE LEGAL CASELOAD

Accomplishments: Original target, to reduce legal caseload by 20 percent, has been met. Original legal caseload has been reduced 25 percent. Significant new case work is beginning to mount, as past due loans are foreclosed or significant collection activity is undertaken. While the original target has been met for this objective, it must be viewed that this area of the Receivership operation will grow as a result of loan collection activities being stepped up.

[Responses of Mr. Duncan to Senator Conrad, letters, and responses to Senator Boschwitz and the prepared statement of Mr. Massey follow:]

Subcommittee on Agricultural Credit
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY
Implementation of the Agricultural Credit Act of 1987:
Borrower Rights and Restructuring

Question. Do you believe that the Agricultural Credit Act of 1987, including the borrowers' rights and restructuring provisions, should be applied equally throughout the System or should each District be allowed to interpret the law as it sees fit?

Answer. To the extent that the Agricultural Credit Act of 1987 (1987 Act) and the implementing regulations, including the borrower rights provisions, set forth statutory and regulatory requirements with which all institutions must comply, there should be consistent application among the Farm Credit districts. However, the implementation of certain borrower rights provisions may necessarily vary in some respects. In fact, the Farm Credit Act of 1971, as amended (the Act), recognizes that there may be differences among the various districts, in that the Act requires each bank board of directors to develop a restructuring policy. See section 4.14A(g) of the Act. The Farm Credit Administration (FCA) does not believe that it is appropriate for a regulator to require each lender to implement the borrower rights provisions in such a manner that the FCA is, in effect, placed in the role of making business decisions that should be made by the management or the board of directors of the lender. Rather, the FCA's role as a regulator is to examine for statutory and regulatory compliance with the borrower rights provisions (as well as all other requirements of the Act and regulations), and where violations are discovered, to take appropriate corrective action.

Question. What role do you see for the Farm Credit Administration in enforcing a consistent, equal application of the Act, including the borrowers' rights and restructuring provisions, throughout the System?

Answer. The FCA is the Federal regulator of the institutions of the Farm Credit System. The enforcement powers provided to the FCA under the provisions of the Act are being utilized to ensure that violations of borrower rights have been corrected in those System institutions where these violations occurred and were documented by FCA reports of examination.

Each System institution which has primary lender status is examined on an annual basis by the FCA. A review of the borrower rights and restructuring provisions of the Act are included as part of the scope for each of these examinations. When violations of those provisions have been determined to exist, the FCA has required correction, and in some cases as part of Cease and Desist Orders, Agreements or formal supervisory letters have been issued to the respective institutions where the violation occurred.

The equal application of borrower rights provisions of the Act has been assured through FCA's examination and enforcement process. Each institution is evaluated utilizing consistent examination guidelines and a uniform rating system. The use of FCA enforcement authorities is centrally controlled.

Question. In your testimony, at the June 19th hearing on the implementation of the Agricultural Credit Act of 1987, you stated that you had "talked" with the senior officers of several farm credit districts because of their "violation of the spirit" of the Act with regard to borrowers' rights and restructuring. Which districts do you feel have "violated the spirit" of the Act?

Answer. My information involving possible violations of the spirit of the Act is derived from the flow of mail and other communications to the FCA from borrower/stockholders and their representatives. Where this flow of concern appeared to represent a pattern of problems in carrying out the spirit of the Act, I have been in discussion with senior officials in those institutions. The pattern of problems I refer to included:

- Assertions were made that no credence was being given by the institution or its credit review committee to property appraisals obtained by borrowers, often obtained at some considerable expense to the borrower. While the institution is not required to base a decision on such outside appraisals, neither had the bank clearly conveyed this information to the borrower in advance of the borrower's obtaining the appraisal.
- When a credit request was turned down by the lender and the borrower requested the opportunity to appear before a credit review committee, the borrower was sometimes told the credit review committee was meeting that same day and would hear the borrower's request for reconsideration. The result was the borrower was sometimes unable to adequately prepare for the presentation to the credit review committee and, moreover, was unable to arrange in the short timeframe available--sometimes only a few hours--to have legal counsel or other professional support at the meeting.
- When the credit review committee returned an adverse decision on a borrower's request or the lender rejected a restructuring proposal, the bank or credit review committee did not adequately explain to the borrower the basis for the adverse decision.

In my visits with senior officials of the Farm Credit System, there was agreement that more sensitive and thoughtful handling of restructuring adverse credit and credit review processes and decisions would go a long way toward resolving these problems. There was also commitment to better handling of these situations. Since that time, indications of such problems have become much less frequent.

A pattern indicating a problem in the areas described above encompassed the Middle West, the Lake States, the northern plains, and the Pacific Northwest.

Question. I am aware the FCA "reviews" restructuring activities during its examination of FCS institutions. In addition to that, has FCA done a comparative analysis of the borrower restructuring in the 12 FCS Districts?

Answer. The Farm Credit Administration has not undertaken any comparative analysis of loan restructuring in the 12 Farm Credit Districts at this time. However, the Farm Credit Administration collects data on the dollar amounts of outstanding loans and formally restructured loans from quarterly call report statistics. As more data is collected, the agency plans to analyze it and report on the major findings.

Question. The Subcommittee on Agricultural Credit has received testimony that the basic criteria and calculations made to determine whether or not borrowers' loans can be restructured vary from district to district within the Farm Credit System. While each case will vary somewhat, the basic elements of the calculation should be calculated considering the cash flow of the borrower, his other obligations, living expenses, and contingencies. The recovery value of the property is the sales price that can reasonably be expected minus all selling costs, the cost of holding the land for a year or two, any back taxes, foreclosure costs, legal fees, etc. If the cost of restructuring is lower than the cost of foreclosure, the farmer should be restructured. Stated another way, if the value of the restructured loan is higher than the recovery value of the loan. Please provide the Subcommittee with a sample calculation taking into account the factors noted in the Act. You need not use actual numbers, but merely show how it should be done according to the law.

Answer. There are a large number of variables which may be relevant when a lender determines whether to restructure a loan or to foreclose. Several of these variables are qualitative and require careful consideration by the institution. Such factors include:

- ° the borrower's previously demonstrated management ability,
- ° whether the borrower has been completely honest and cooperative with the institution in reporting income and expenses as well as an accurate representation of financial condition,
- ° repayment history and financial trends, and
- ° whether the borrower's projected ability to produce income or sell unnecessary assets is reasonable.

Assuming all relevant factors can be answered satisfactorily, the individual factors surrounding a particular restructuring proposal may still dictate substantial variation in calculating restructure and foreclosure costs when compared to other restructure proposals geographically or by commodity raised. Given a relatively simple restructure proposal, one logical analysis might include:

- ° Determining whether the borrower's net cash flow is sufficient to meet total debt payments, living expenses, taxes, and any miscellaneous expenses. Net cash flow would normally include farm income, less farm expenses, plus or minus any outside personal and business income.

- ° If the borrower has sufficient cash flow, the next step may be to assess the collateral. If the borrower has insufficient cash flow, he/she would need to determine how the debt can be reduced to a manageable level. If the borrower proposes selling assets, the institution should consider local market conditions, reasonableness of the borrower's plans, and what effects the sale would have on the borrower's ability to generate future income.

° The third step may be to review the collateral costs. The Farm Credit Act does not prescribe any set formulas that must be either included or excluded. Therefore, the types of costs to be considered may vary significantly between restructure proposals due to State laws and geographical or economic bases, among other factors. For example, the costs of judicial foreclosure varies significantly from the cost of nonjudicial foreclosure.

Question. While I am aware that you have discussed "violations of the spirit" of the restructuring provisions of the Act, has FCA ordered any District or any institution of FCS to improve its restructuring procedures?

Answer. Yes, there have been instances in which FCA has required institutions to improve restructuring procedures. FCA has imposed these requirements as part of Cease and Desist Orders, Written Agreements, Supervisory Conditions of Merger, and Supervisory Letters.

Question. Has FCA issued any cease and desist orders with regard to any FCS institution's implementation of the borrowers' rights and restructuring?

Answer. FCA has issued Cease and Desist Orders to two institutions which required, among other things, compliance with borrowers' rights and troubled debt restructuring regulations.

Question. The Subcommittee has correspondence indicating that appeals of restructuring denials are handled differently in different Districts. How many appeals of restructuring decisions have been made and how many have been successful?

Answer. The FCA, as the arm's-length regulator of Farm Credit System institutions, examines each institution separately. Individual boards of directors are held accountable for the conduct of that institution. The FCA examines each institution for compliance with applicable Federal laws and regulations, and adequacy of internal policies and procedures. Such examinations include a review for compliance with the borrower rights legislation, with findings reported to that institution, and corrective actions established on a case-by-case basis. The FCA does not, however, maintain aggregate records for all institutions that would provide the information requested.

Question. The FCA is in charge of the Jackson receivership. One would expect that the Jackson receiver would be following the letter and spirit of the borrowers' rights and restructuring provisions of the Act. However, the Jackson receiver has restructured only 120 loans in the past year, the Subcommittee hears continual complaints about the violations of borrowers' rights, and the receiver is involved in literally hundreds of borrower lawsuits. What are the reasons for the virtually absence of restructuring in the Jackson receivership? To what do you attribute the high number of court cases involving the receiver?

Answer. From the inception of the receivership on May 20, 1988, the Receiver has made diligent efforts to comply with the provisions of the Act while performing its duties. However, in so doing, the Receiver's purpose is to liquidate the institutions as expeditiously as possible--not to conduct an ongoing operation. As a result, it is altogether inaccurate and misleading to compare the results of a liquidating receivership, with regard to borrowers' rights, to an ongoing Farm Credit Bank.

It is also important to note that litigation is a natural and historic by-product of a liquidation. Part of the purpose of a liquidation is to accelerate claims that might exist in order to resolve them in a timely manner.

With respect to borrowers' rights, since May 20, 1988, the Receiver has mailed out 1,074 borrowers' rights packages. Of that number, 486 were returned to the Receiver with a request for some type of restructure, compromise, or reamortization. As a result of these requests, the Receiver has completed 135 individual restructures involving debt with a total book value of $30,384,303; 146 reamortizations involving debt with a total book value of $13,656,436; and has compromised 75 loans involving debt with a total book value of $30,923,062. In these compromises or settlements, the Receiver has written off approximately $15 million of indebtedness. In the restructures, it has written off approximately $8.3 million of indebtedness. These restructures, compromises, and reamortizations involve 356 loans with a total book value of approximately $75 million. The total amount of indebtedness written off was approximately $23.3 million. In approximately 95 percent of these restructures and reamortizations, interest rate concessions were given. All the restructures which have been approved by the Receiver were done on the basis of the least cost method of analysis, as required by the Farm Credit Act and regulations.

Since the inception of the receivership, only one case involving borrowers' rights has been filed which is still outstanding. Two other cases have been resolved with a ruling in favor of the receivership as to borrowers' rights issues.

Question. What is FCA doing to provide direction to the Jackson receiver to fully protect borrowers' rights? What would be done to protect those rights should the package of loan assets now for sale by the Jackson receiver be purchased by a non-Farm Credit System institution?

Answer. The Receiver is required under the Receivership Agreement, between FCA and REW Enterprises, Inc., to adhere to the Farm Credit Act of 1971, as amended, and FCA Regulations, including elements relating to borrower rights. The FCA Receivership Manual, which serves as a guide for receivership operations, mandates that, ". . . the receiver shall comply with applicable loan restructuring and other borrower rights regulations issued pursuant to the Farm Credit Act of 1971." Furthermore, the Order Appointing Receiver adopted by the FCA Board on May 20, 1988, specifically requires that the receiver comply with the borrower rights provisions of the Act and FCA Regulations. There has been, and continues to be, substantial communication between the Receiver and FCA regarding borrower rights.

Inasmuch as the package of loan assets now for sale has not been offered to non-Farm Credit institutions, the second part of your question is not an issue. Moreover, the answer to that question would involve interpretations of statutory requirements and questions regarding the creation of contractual obligations. The resolution of these questions would be of concern to FCA, the Receiver, and any prospective purchases as they will impact the marketability and price of the loans involved.

Question. When do you expect the Jackson receivership's job to be completed?

Answer. It is impossible at this time to project with reasonable certainty when the receivership will be terminated. If the current loan asset offering is successful, the receiver could reduce the number of loans held to approximately 400 in number from the 21,225 held on May 20, 1988. However, it might be necessary to maintain the receivership at a significantly reduced staff size for some time, to resolve the litigation now pending and to dispose of the remaining assets associated with the litigation. The Receiver and FCA will continue to pursue all avenues to conclude the receivership as expeditiously as possible in reasonable and prudent accordance with both the law and sound business practices.

Question. How many loans held by the Jackson receiver are in litigation? Please break down the cases into (1) foreclosure actions; (2) bankruptcy cases; (3) suits on debt instruments; (4) borrower suits on borrowers' rights issues; and (5) other cases.

Answer. As of June 30, 1989, the Receiver had 131 loans in foreclosure; 244 loans in bankruptcy; 43 deficiency suits and 47 deficiency judgments (debt instruments); and three borrower suits on borrowers' rights issues, two of which are now settled. And in the "other" category, 76 loans are in third-party litigation.

Question. What is your current estimate of the cost of the liquidation of the Jackson FLB? What are the costs to date?

Answer. As of March 31, 1989, the Receiver estimated the costs of liquidation for the Jackson Receivership are approximately $450,000,000. This includes loan loss provision, interest expense on the bonded indebtedness, the payment of principal on the debt, and general operating expenses. As this is merely an estimate, we would caution the Subcommittee. There are many variables outside of the FCA, or the receiver's direct control, which could alter events and therefore the final outcome.

The total costs to date of liquidation of the Federal Land Bank of Jackson and the Federal Land Bank Association of Jackson have been $237,560,000. Of these costs, $163,689,000 is provision for loan losses and acquired property losses; $36,728,000 is from the negative net interest margin; operating expenses are $17,009,000; and a $29,196,000 loss on sale of assets.

Question. What are the operational expenses of the Jackson receivership to date? Please include all costs, including litigation costs, in your answer except losses on loans.

Answer. Operating costs of the receivership for the period May 20, 1988, through and including May 31, 1989, have been $17,009,000. Current operating expenses are averaging approximately $1,000,000 per month and decreasing. As requested, this does include litigation costs but does not include a substantial provision for loan losses nor does it include interest expense, which is a major expenditure for the receivership.

Question. Are any other institutions, particularly any District level banks, likely to be put into receivership or conservatorship in the near future?

Answer. FCA placed two production credit associations in receivership this year. As I indicated to you in my June 19, 1989 statement, 134 institutions are rated high concern. A few of these institutions may eventually become candidates for conservatorship or receivership.

Question. Please describe the qualifications of the employees hired to deal with restructuring troubled loans in the Jackson receivership. Please describe the training process for these employees. Were any employees or training personnel brought in from FCS districts with experience in restructuring; e.g., the St. Paul or Omaha districts?

Answer. On May 20, 1988, there were nine individuals on the Receiver's staff who assumed management responsibility of the Federal Land Bank of Jackson and the Federal Land Bank Association of Jackson. These nine individuals were all trained in the commercial banking industry. Each had in excess of 15 years' experience, which included extensive experience in handling the restructure of troubled loans. Two of the Receiver directorate had been employed by the Farm Credit System with the Capital Corporation.

During the past 13 months, the Receiver has held 12 formal training sessions to train personnel in the procedures of handling the restructuring of troubled loans and 6 formal borrowers' rights meetings throughout the three-state area for its account managers. In addition, four 8-hour training sessions were held to train personnel in the analysis of financial statements and the process for the least cost method of analysis. These training sessions were conducted by two experienced credit administration professionals from the commercial banking industry. In addition, numerous informal training sessions and meetings are held on an ongoing basis.

The Receiver has 27 employees who formerly worked for the Capital Corporation, 17 employees who have worked for other financial institutions in Special Asset Departments, five employees who have worked for other Farm Credit institutions, and two employees who are former FCA employees.

It was difficult for the Receiver to hire personnel from other Farm Credit System districts because employees could not transfer from one district to the receivership and maintain their level of benefits and years of service.

Question. What is the legal status of decisions issued by the Farm Credit Administration operating without a quorum? Does the law make specific provision for the operation of FCA without a quorum?

Answer. The decisions made by the FCA since January 6, 1989, are valid decisions of the FCA because they were made pursuant to a duly authorized delegation of authority. At the last meeting at which a quorum was present (January 6, 1989), the FCA Board delegated to Marvin Duncan the authority to exercise, in his discretion, any and all authorities of the FCA granted to the agency or the Board by statute, regulation or otherwise, except those authorities that are nondelegable (i.e., the authority to approve rules and regulations, the authority to establish broad general policy direction, and authorities that the Act specifically prohibits to be delegated). All decisions of the Acting Chairman since January 6, 1989, have been made pursuant to that delegation. The Board's action is reflected in FCA Order No. 888, published at 54 Fed. Reg. 7881, February 23, 1989.

To determine whether a specific delegation is authorized, the courts have ruled that a power vested in the head of an agency by statute may be delegated if the statute expressly or impliedly authorized the delegation. Fleming v. Mohawk Wrecking and Lumber Co., 331 U.S. 111, 120-23 (1947); Champaign County, Illinois v. United States, 611 F.2d 1200, 1207 (7th Cir. 1979); National Labor Relations Board v. John S. Barnes Corporation, 178 F.2d 156, 159 (7th Cir. 1949); Donovan v. National Bank of Alaska, 696 F.2d 678, 681-82 (9th Cir. 1983). The courts have also held that a delegation of authority survives the resignation of the person who issued the delegation. Champaign County, Illinois, 611 F.2d at 1207; Donovan, 696 F.2d at 682.

A review of the Farm Credit Act of 1971, as amended (Act), demonstrates that the delegation of authority provided for by FCA Order No. 888 is authorized by the Act. Section 5.9(3) of the Act requires the Board to "provide for the performance of all the powers and duties vested in the Farm Credit Administration." Section 5.7 of the Act provides that the FCA shall be composed of the Board and such other personnel as are employed in carrying out the functions, powers, and duties vested in the FCA. These sections demonstrate that the Board has the authority to delegate powers and duties vested in either the FCA or the Board, unless the power or duty is nondelegable under the Act.

In addition, it can be inferred from the Act that the Board is authorized to delegate certain authorities not specifically prohibited from being delegated. For example, the Act specifically prohibits the delegation of the Board's authority to approve the salary scale for employees of the institutions of the System (except associations), and the compensation of the chief executive officers of such institutions. Section 5.17(a)(13). From this specific prohibition it is clear that the Board is able to delegate those authorities that the Act does not prohibit from being delegated.

Question. If any of the FCA's decisions are challenged in court, what legal precedents exist in this area? Are there legal precedents for other regulatory bodies operating without a legal quorum and without specific legal authority to operate without a quorum?

Answer. There are legal precedents upholding delegations of authority by boards of regulatory bodies. Some of the leading cases relating to the delegation of powers vested in the heads of agencies by statute are as follows: *Fleming v. Mohawk Wrecking and Lumber Co.*, 331 U.S. 111, 120-23 (1947); *Champaign County, Illinois v. United States*, 611 F.2d 1200, 1207 (7th Cir. 1979). *National Labor Relations Board v. John S. Barnes Corporation*, 178 F.2d 156, 159 (7th Cir. 1949); *Donovan v. National Bank of Alaska*, 696 F. 2d 678, 681-82 (9th Cir. 1983). Because the test for determining whether a specific delegation is authorized is based on an interpretation of the statute vesting the delegated power in the head of the agency, the legal precedent established in these cases is limited to the specific facts of each case. In most of the cases reviewed, however, the courts have held that the head of an agency did have the implied or express authority to delegate a power vested in him.

Question. Please provide the Subcommittee with your General Counsel's legal opinion on the forced merger of the Jackson FICB and the Texas FCB.

Answer. As I am sure you can understand, it is our practice not to release internal memoranda protected by attorney-client privilege, especially when the FCA is involved in litigation to which the memoranda are relevant, lest such release be deemed to be a waiver of that privilege. However, the position of FCA's Office of General Counsel with respect to the proper application of section 410 of the 1987 Act in the Jackson District is set forth in the letter of April 13, 1989, to the FICB of Jackson and the FCB of Texas, and the letter of June 15, 1989, to the FICB of Jackson, FCB of Wichita, and the First South Production Credit Association, copies of both letters are attached.

Question. Some districts are treating the "preliminary" application as the final application on which they are to make an up or down decision. Do you believe that is a correct interpretation of the law?

Answer. The Act defines an "application for restructuring" as a written request from a borrower for restructuring "in accordance with a *preliminary* plan proposed by the borrower as part of the application... submitted on the appropriate forms...accompanied by sufficient information and repayment projections...to support a sound credit decision." Section 4.14A(a)(1) of the Act (emphasis added). The use of the word "preliminary" indicates that a plan may be revised or supplemented if necessary before an application becomes final, so that a lender is able to make an informed decision. Therefore, FCA would expect that communications or negotiations between lender and borrower would occur before a lender rejects an application as a final application.

Question. Should borrowers have an outline of the criteria and formulas which each district will use in evaluating restructuring proposal? Should the criteria and formulas be consistent throughout the system?

Answer. The Act and the regulations provide guidance on how a lender must evaluate a restructuring application. See section 4.14A(d), (e) and (f) of the Act; 12 CFR 614.4517. Based on these statutory and regulatory requirements, the borrower is provided with an outline of the criteria that a lender must use to evaluate a restructuring proposal. Since each restructuring application will vary depending on the type of loan, borrower, lender, and other factors, the FCA does not believe that it is feasible to establish additional, more specific formulas or criteria.

In response to the question of whether a borrower can know every factor or formula that a lender will use in its determination of a restructuring application before a borrower submits his restructuring plan, FCA does not think that this is possible. Since the factorial circumstances of each restructuring are distinct and individual, it is not possible for a lender to know in advance what specific factor it will be appropriate to consider in making its determination. Furthermore, even it it were possible to disclose such information, a lender's negotiating needs during the restructuring process must be balanced against a borrower's need to know the criteria used. If all information were to be disclosed to the borrower before the negotiation process even began, the lender might not be able to negotiate effectively. On the other hand, a borrower is entitled to know the factors involved. FCA believes that the statute effectively balances these two interests by setting forth the factors the lender must use, thus putting the borrower on notice of such factors.

To the extent that each Farm Credit district must comply with the Act and the regulations, there is consistent application throughout all of the districts. However, just as each loan is different, each district may have different concerns regarding each restructuring process. The Act recognizes that each district may have different interests concerning the restructuring process in that it requires each bank board of directors to develop its own restructuring policy. See section 4.14A(g) of the Act. The fact that the Act recognizes that each bank board of directors should develop its own restructuring policy indicates that Congress intended that consideration be given to local conditions during the restructuring process. FCA agrees that there is such a need for concern with local conditions, and accordingly, FCA does not believe that it is practical to require any greater degree of consistency throughout the Farm Credit System. Furthermore, since the restructuring process involves a lender making individual business decisions on each application, FCA does not believe that its role as a regulator should be to make these decisions for a lender by establishing (with more specificity than that set forth in the Act) a standardized set of criteria to be used by a lender in evaluating a restructuring proposal.

Question. In the regulations, you specify that lenders need not provide "confidential" information to borrowers concerning their loans, but that lenders must provide "reasons for denial, critical assumptions, and relevant information" concerning the restructuring decision. What is "confidential" information? How does FCA define "reasons for denial" of restructuring; "critical assumptions" used in restructuring calculations; and "relevant information" used in restructuring decisions?

Answer. The terms have their commonly understood meanings.

Section 614.4518(a) of 12 CFR states that upon denial of a restructuring application, a lender must furnish a borrower with "[T]he reason(s) for the denial, and any critical assumptions and relevant information upon which the reasons are based, except that any confidential information shall not be disclosed." At a minimum, the borrower is entitled to know why his restructuring application was denied. In addition, "reasons for denial," "critical assumptions," and "relevant information" are intended to provide sufficient information to the borrower to enable him to decide whether he wishes to appeal the denial to the credit review committee. However, the lender need not disclose every piece of information or proprietary information so that a lender is unable to effectively negotiate with borrowers or compete with other financial institutions. A lender need only disclose that which was critical and relevant to the lender's decision so that the borrower can fully understand the reasons for the lender's denial.

It is difficult to define the cited terms with any more specificity inasmuch as they depend on the restructuring application, the loan, and other factors. For example, in some instances the "reasons for denial" may be based on calculations and purely quantifiable factors, while in other instances the "reasons for denial" may include an "intangible," such as a determination that the borrower's operations are not likely to produce an adequate cash flow.

The prohibition against providing "confidential information" is primarily intended to protect the identity and interests of third parties; for example, the privacy interests of a third party whose property's appraisal was used as a comparable figure for assessing the value of the property of the restructuring applicant.

Question. Congress intended that Credit Review Boards review the decision not to restructure a loan; i.e., to make a determination whether or not a loan could be restructured in such a way that the value of the restructured loan would be greater than the recovery value of the foreclosed loan. Is FCA's interpretation of law consistent with Congresses' intent?

Answer. The Act establishes a "cost test" to be used by a lender in exercising its business judgment in deciding whether to restructure a loan. The "cost test" states that, "[i]f the potential cost to...[the] qualified lender of restructuring the loan...is less than or equal to the potential cost of foreclosure, the qualified lender shall restructure the loan...." Section 4.14A(e)(1) of the Act. The Act also provides that the credit review committee(s) shall review denials of restructuring applications. Section 4.14(b)(2) of the Act. Therefore, in deciding whether a denial of a restructuring application is appropriate, one of the determinations that the Credit Review Committee must review is whether the institution correctly applied the "cost test." Thus, FCA believes that its interpretation of the law is consistent with the statute and the intent of Congress.

Question. Do all of the Districts have an independent appraisal procedure? Please describe the procedures for the 12 districts. Make sure to include whether district employees are included as "independent" appraisers.

Answer. None of the districts consider employees as "independent" appraisers for purposes of borrower rights regulations (section 4.14(d) of the Farm Credit Act of 1971, as amended). In seven Farm Credit districts institution appraisers are also employed as loan officers. In two Farm Credit districts there exists partial separation between the duties of appraisers and loan officers; one district varies depending on the size of the lending office, and the second district varies depending on the loan's size. The three remaining Farm Credit districts have established separate credit and appraisal departments which are independent of each other.

Question. Many districts have not allowed borrowers to apply for restructuring if the district had initiated a foreclosure action against them prior to the signing of the Act. FCA has correctly advised the System that these borrowers should be given a chance to restructure. Has FCA reprimanded, advised, written, or, in any way, attempted to bring these districts into compliance with the law?

Answer. Yes, as indicated in the question, FCA has advised System institutions of the importance to provide distressed borrowers with the chance to restructure. I have emphasized to the Office of Examination that all examinations of Farm Credit institutions include a careful review of compliance with borrower's rights regulations, particularly regarding loan restructurings. As a result, deficiencies or violations have been discovered which are specifically identified in the Report of Examination on the institution. As already described in my response to Question #6, the Enforcement Division has also addressed borrower's rights issues, specifically loan restructuring, in various enforcement documents and supervisory letters.

Question. Some districts are apparently using a different "base" from which to calculate the "cost of restructuring" versus "the cost of foreclosure." What is FCA's understanding of the common base from which such calculations should proceed?

Answer. Neither the Farm Credit Act nor its implementing regulations have a requirement for a uniform "base" from which to determine restructuring and foreclosure costs. As previously indicated, there are several factors which enter into determining what such costs may be. The factors may vary on a loan-by-loan geographical commodity basis, or other factors. Similarly, the individual factors in a particular restructure application may warrant using a different "base" when compared to another application due to collateral pledged or commodity raised. As long as an institution has established a reasonable, commonly recognized starting point for determining both the restructuring and foreclosure costs, FCA can not mandate what the "base" should be. The most common starting point is collateral value (market value less prior liens). However, other "bases" may be equally valid.

Question. Some districts do not restructure borrowers except under bankruptcy court orders. Others refuse to negotiate once the borrower has filed for protection under the bankruptcy code. Congress clearly intended the borrowers' rights and restructuring provisions to be used to avoid bankruptcy and all of its associated costs. What is FCA's policy on negotiating restructurings while a farmer is in bankruptcy?

Answer. While drafting the final borrower rights regulations, FCA recognized that the determination of this issue was a matter for the courts. See 53 Fed. Reg. 35427, 35429 (1988). However, the issue of whether a lender can proceed pursuant to the restructuring provisions of the Act while a borrower is in bankruptcy is currently under review by the FCA. Upon completion of its review, we will inform you of the results.

Question. The Jackson receivership sells all acquired land at auction prior to offering the former owner the first right of refusal. It allows the former owner to match the top bidder's offer, but then allows the top bidder to raise his bid. This procedure violates both the spirit and letter of the law. What is FCA doing to reform this procedure?

Answer. The receivership sells the vast majority of the properties it acquires through private sales. Of the 132,682 acres sold by the Receiver during the first year of the receivership, only 35,700 acres, or 26.91 percent of the acres sold, were sold at auction. All of the previous owners of the land sold by private sale were first given the private sale right of first refusal under the Agricultural Credit Act of 1987.

Most of the previous owners of the properties auctioned were offered the private sale right of first refusal at appraised value prior to the auctions. Regardless of whether or not they had previously been given an opportunity to purchase the property privately, all previous owners were again given notice of their rights at a public sale.

Auctions are an alternative method of disposing of acquired properties which was clearly provided for under the FCA regulations. All of the applicable conditions, notifications, and requirements of the Act in FCA regulations are being fulfilled when the Receiver uses the auction method of disposing of property.

Question. Many districts are using suits on debt instruments to attempt to avoid the 45 day notice of foreclosure required by the Act. However, the Act is very clear in stating that "foreclosure proceeding" means "a foreclosure or similar legal proceeding to enforce a lien on property,..." What are you doing to enforce this aspect of borrowers' rights?

Answer. "Foreclosure proceeding" means "a foreclosure or similar legal proceeding to enforce a lien on property...that secures a nonaccrual or distressed loan...or the seizing of and realizing on nonreal property collateral...to effect collection of a nonaccrual or distressed loan." Section 4.14A(a)(4) of the Act. Furthermore, section 4.14A(b)(2) of the Act states, "[n]ot later than 45 days before any qualified lender begins foreclosure proceedings with respect to a loan...the lender shall notify the borrower that the loan may be suitable for restructuring...." Therefore, at least 45 days before a lender begins a "foreclosure proceeding," the Act requires that a borrower must be notified of his restructuring rights. A lender may not defeat a borrower's rights under the Act by labeling the "foreclosure proceeding" as another action, if the lender is in fact pursuing a "foreclosure proceeding," as defined by section 4.14A(a)(4) of the Act.

The FCA is not aware that, as stated in your letter, "[m]any districts are using suits on debt instruments to attempt to avoid the 45 day notice of foreclosure required by the Act." The FCA is examining and will continue to examine for violations of borrower rights, as well as other statutory and regulatory violations. Upon the discovery of such violations, the FCA will take actions, including enforcement actions, as appropriate.

Farm Credit Administration

1501 Farm Credit Drive
McLean, Virginia 22102-5090
(703) 883-4000

FCA
FARM CREDIT ADMINISTRATION

JUN 15 1989

Mr. David Waide
Chairman of the Board
Federal Intermediate Credit Bank
of Jackson
1800 E. County Line Road
P.O. Box 12468
Jackson, MS 39236-2468

Mr. Ernest B. Rogers
Chairman of the Board
First South Production Credit Association
3000 Old Canton Road
P.O. Box 5009
Jackson, MS 39296-5009

Mr. Marvin R. Scherler
Chairman of the Board
Farm Credit Bank of Wichita
245 North Waco
P.O. Box 2940
Wichita, KS 67201-2940

Gentlemen:

This responds to your letter of June 7, 1989, requesting that the Farm Credit Administration (FCA) reconsider its determination regarding the requirements of section 410 of the Agricultural Credit Act of 1987 (1987 Act) as they apply to the merger of the Federal Intermediate Credit Bank of Jackson (FICBJ) and the Farm Credit Bank of Texas (FCBT). Officials of the FCA met with you and other officials of your institutions on June 7, 1989, to obtain a thorough explanation of the positions of your respective institutions. In connection with this reconsideration request, you have also requested that the FCB of Wichita (FCBW) be able to exchange certain information with the FICBJ and that there be some relaxation in the timetable for the preparation of a merger plan between the FICBJ and the FCBT.

The FCA has carefully considered the arguments set forth in your June 7, 1989 letter and the points made during the course of discussions with FCA officials. Following are the Agency's determinations regarding the three issues that have been raised. The FCA affirms its determination that, in accordance with section 410 of the 1987 Act, the FICBJ and FCBT are required to merge not later than August 10, 1989. In light of the affirmation of this determination, the request for the sharing of information between the FICBJ and FCBW is denied. Based on our understanding of the status of the negotiations between the FCBT and FICBJ, we believe that the timetables for the development of merger documents can be met, and that the parties will be able to achieve the merger not later than the August 10, 1989 effective date. The FCA cannot extend the deadline for the submission of materials and the consummation of the merger and expects both banks to use their good faith efforts to meet these deadlines. Each of these points is discussed in greater detail below.

Section 410 of the 1987 Act required the FICB and Federal land bank (FLB) in each district to merge to form an FCB not later than July 6, 1988. The 1987 Act required that each such merger should occur pursuant to a merger plan agreed to by the boards of directors of such banks and approved by the FCA. If any of the banks failed to agree to a merger plan, the merger would occur pursuant to a merger plan prescribed by the FCA. No section 410 merger occurred in the Jackson District because, on May 20, 1988, the FLB of Jackson (FLBJ) was placed in receivership. However, as of February 10, 1989, the charter of the FCBT was amended to include the long term lending authorities previously held by the FLBJ.

As of the date the FLBJ was placed in receivership there was no active FLB in the district, and thus the FICBJ was not required to merge in accordance with section 410 until a bank was chartered in that territory with the powers, duties, and authorities of an FLB. The statutory obligation to merge remained but the time requirement for the completion of the merger was tolled until such time as there was a bank which satisfied the statutory requirements for a 410 merger. Once such an institution was chartered, the 6-month timetable for the 410 merger began to run from the date of the FCBT charter amendment. This is the same 6-month time period afforded all the banks involved in all of the other 410 mergers.

The FCA disagrees with the position expressed in your letter that the FCBT is not an FLB for purposes of section 410. We believe it is clear that the 1987 Act intended that following the expiration of the 6-month period after the enactment of the 1987 Act there would no longer be FLBs or FICBs as such but only FCBs. Because of the intervening liquidation of the FLBJ, that time period was tolled until such time as a bank with the powers, duties, and authorities of the FLBJ was in place with which the FICBJ could merge. For purposes of section 410 of the 1987 Act, the FCBT must be considered as the FLB in the Jackson territory.

We fully understand that under section 410, neither the FCBT nor the FICBJ has the discretion to decline to merge. However, that is the same position that every FICB and FLB experienced. The FLB and FICB in each district were required to merge under section 410 regardless of whether they would have otherwise elected to do so and these required mergers were not subject to stockholder votes. There is no reason to believe that the FICBJ should be entitled to any greater rights than any other FICB was afforded under the Act.

We also note the position in your letter that a merger between the FICBJ and FCBT should be considered an interdistrict merger that, in accordance with section 7.12 of the Farm Credit Act of 1971 (Act), would require the approval of the stockholders of each institution. We believe that the FCBT and FICBJ constitute an FLB and FICB in the same district, thus making section 410 of the 1987 Act applicable rather than 7.12, which applies to interdistrict mergers.

With regard to the contemplated merger between the FCBW and the FICBJ, there is no statutory authority for such a merger. The authority in 7.12 applies to interdistrict mergers of similar banks operating under the same title of the Act. This provision would only permit the FCBW to merge with another FCB.

Furthermore, we note that a merger such as is contemplated in your letter would foreclose the possibility of having coordinated credit services in the Jackson territory. If the Federal land bank associations (FLBAs) in that territory are discounting with one bank which is limited to the discounting of long-term loans, and the production credit associations (PCAs) are discounting with another bank which is only authorized to discount short- and intermediate-term loans, the borrowers in that area will never have the opportunity to enjoy the type of one-stop credit services that were envisioned through the authority to create agricultural credit associations.

Based on the affirmation of the FCA's decision, we believe that no useful purpose would be served by the sharing of confidential and privileged financial and operating information between the FICBJ and the FCBW. As you know, there are sound regulatory reasons for preserving the confidentiality of this type of information and there are no reasons for its dissemination at this time. If, following the merger of the FCBT and FICBJ, the FCBW wishes to consider the possibility of merging with the newly constituted FCB, the two FCBs could consider sharing appropriate information at that time.

As we advised the FICBJ and FCBT on May 15, 1989, the timetable for the submission of documents is based on the deadline for completion of the merger and cannot be extended. Based on our discussions at the June 7, 1989 meeting, we have reason to believe that the FICBJ and the FCBT can arrive at a successful resolution of all outstanding issues in time to complete the development of the merger package by June 29, 1989. We understand that there are a relatively few outstanding issues, and with appropriate effort, those issues can be resolved in time to meet this deadline. The FCA expects that both banks will, in good faith, use their best efforts to meet these deadlines.

We fully appreciate the sincerity of your position and your need to express the concerns which have been raised and wish to assure you that FCA has given this matter careful consideration. We remain convinced that all of the affected parties will keep the overall best interests of their borrowers and stockholders in the forefront of their consideration and seek to do everything possible to implement these requirements in the most thoughtful and deliberate way.

Sincerely,

Marvin Duncan

Marvin Duncan
Acting Chairman

Farm Credit Administration

1501 Farm Credit Drive
McLean, Virginia 22102-5090
(703) 883-4000

APR 13 1989

Mr. Don W. Oates
Chief Executive Officer and President
Federal Intermediate Credit Bank of Jackson
Box 12468
Jackson, Mississippi 39236-2468

Dear Mr. Oates:

As you are aware, the Federal Intermediate Credit Bank (FICB) of Jackson is the only FICB which has not merged to form a Farm Credit Bank (FCB). We have been informed that merger discussions between the FICB of Jackson and the Texas FCB, which now has long-term real estate lending authority in the Fifth Farm Credit District, have come to a standstill. Without explicit statutory authority for its corporate existence, the status of the FICB of Jackson is clearly in question.

Section 410 of the Agricultural Credit Act of 1987 (1987 Act), enacted on January 6, 1988, provides, in part:

> Not later than 6 months after the date of the enactment of this section, the Federal land bank and the Federal intermediate credit bank of each Farm Credit System district shall merge into a Farm Credit Bank in such district pursuant to a plan of merger agreed on by the Boards of Directors of such banks and approved by the Farm Credit Administration, or if such banks fail to agree, a plan of merger prescribed by the Farm Credit Administration.

Section 410 of the 1987 Act requires the FICB and FLB in each district to to form an FCB, not later than 6 months after the date of enactment of the 1987 Act, which was July 6, 1988. The merger shall occur pursuant to a merger plan agreed to by the boards of directors of such banks and approved by the FCA. If such banks fail to agree to a plan, the merger shall occur pursuant to a merger plan prescribed by the FCA. Section 410 imposes upon each FICB and FLB the obligation to merge into an FCB.

On May 20, 1988 the FLB of Jackson was placed into receivership. Thus, on July 6, 1988, there was no FLB in the Fifth Farm Credit District which could serve as a merger partner for the FICB of Jackson. The FICB of Jackson was not authorized or required to merge in accordance with section 410 until there was a bank in the district with the powers, duties, and authorities of an FLB. The statutory obligation to merge continued but the time requirement for the completion of the merger was tolled until there was a bank with which the FICB could merge. On February 10, 1989, the charter of the Texas FCB was amended to give the Texas FCB the long-term lending authorities previously held by the FLB of Jackson. After that date, the merger discussions between the FICB of Jackson and the Texas FCB that we noted above apparently reached a standstill. To date, FCA has refrained from dictating a solution in order to afford the FICB of Jackson and the Texas FCB an opportunity to pursue a solution.

We have concluded that, in accordance with section 410 of the 1987 Act, the FICB of Jackson and the Texas FCB are required to merge not later than 6 months after February 10, 1989, the first date on which a suitable merger partner was available in the Fifth Farm Credit District. Please confirm within 10 days of receipt of this letter that you are continuing merger discussions with the Texas FCB and anticipate submitting a plan of merger to FCA to enable the required merger to be completed by August 10, 1989.

Should you have any questions concerning the implementation of the required merger you may contact Elna Luopa, Office of Financial Analysis at (703) 883-4475.

Sincerely,

Marvin Duncan
Acting Chairman

QUESTIONS SUBMITTED BY SENATOR RUDY BOSCHWITZ

REGULATORY EXPENSES

Question. The FCA is charged with oversight of the Farm Credit System. However, FCS farmer-borrowers pay for this regulatory oversight. Have you analyzed the regulatory expenses from the viewpoint of the borrower — on a cost per borrower basis or cost per loan or otherwise related to loan volume?

Answer: We are keenly aware that the borrower ultimately pays for the cost of FCA oversight. However, types of borrowers, a cooperative versus an individual; kinds of loans, mortgage versus operating; and size of loan, many millions versus many thousands; can vary significantly. Costs based on a count in these categories are not really meaningful. A fairer measure of FCA operating costs is the total regulatory cost and, particularly, the cost per employee involved. In this analysis, we must remember that while other regulatory agencies examine many of their institutions only once each 3 to 5 years, FCA is statutorily required to annually examine each Farm Credit institution that is a direct lender. In 1985, prior to implementation of the Farm Credit Amendments Act of 1985, the FCA examined 46 institutions at a cost of $230,435 per examination. In 1988, with greatly expanded statutory responsibilities, 300 institutions were examined at a cost of $67,334 per examination. On a per person as opposed to a per examination basis, the cost to Farm Credit institutions has also declined from $67,010 in 1985 to $59,278 in 1988, an 11-percent decrease unadjusted for inflation. The FCA has the lowest cost per employee of all Federal financial regulatory agencies based on expenditure reported in the Appendices to the Budget of the United States Government.

Question. How do FCA regulatory expenses compare to those of other financial institutions? What is the cost per institution for FCA regulatory expenses?

Answer: We recently completed a limited study which concluded that a direct comparison of costs per institution is difficult because of the uniqueness of statutorily mandated requirements. Several other regulatory agencies have reached similar conclusions. For example, FCA is the sole regulatory agency of Farm Credit institutions. In contrast, commercial banks may have as many as four regulators involved with their operations, each of which assesses the institution--the Comptroller of the Currency (OCC) (for National banks as the primary regulator), the Federal Deposit Insurance Corporation (FDIC) (assessing insurance costs), the Federal Reserve (requiring reserve requirements and the primary regulator for bank holding companies), and state banking authorities (sharing examination responsibilities with the FDIC and the Federal Reserve). In addition, FCA is required to conduct an annual examination of each Farm Credit institution that is a direct lender. Many commercial banks are examined only once every 3 to 5 years, and others are examined off-site.

A more appropriate comparison of costs is the cost per employee for the overall operations of the agency. On this basis, the FCA currently has the lowest cost per employee of the primary Federal financial regulatory agencies. The comparative cost per employee based on actual expenditures reported in the Appendices to the Budget of the United States Government (unadjusted for inflation), is as follows:

Regulator	1985	1988	Percent (Decrease)/Increase
FCA	$67,010	$59,278	(11)
FDIC	56,482	69,099	22
NCUA	53,634	67,951	27
OCC	58,993	66,641	13

Question. The Agricultural Credit Act of 1987 sent a strong message to FCS institutions to pare operating expenses. System loan volume and the number of institutions have both gone down but FCA expenses have gone up. Keeping in mind that farmer-borrowers ultimately pay for FCA regulatory expenses, how can an increase in the FCA budget be justified?

Answer: The total number of Farm Credit institutions is not the major determining factor of the FCA examination workload. The increase in FCA examination costs since 1985 is due to a number of factors. The Farm Credit Amendments Act of 1985 greatly increased the FCA's examination responsibilities and mandated that the FCA examine each Farm Credit institution annually. Because the examination of the associations' loan portfolios had previously been delegated to Farm Credit district banks, the FCA had to increase its examination staff and undertake a major training effort that is still ongoing. As noted previously, only 46 institutions were examined prior to the 1985 amendments. The number is currently over 300. In addition, Congress gave the FCA new enforcement powers similar to those of other regulatory agencies. This increased the agency's workload and staff.

Some of the decrease in total number of Farm Credit institutions in the past year was a direct result of mergers required by the Agricultural Credit Act of 1987. However, the merger of district banks will not greatly reduce the FCA's examination tasks. Furthermore, while the election of Federal land bank associations to become direct lenders will not increase the number of institutions, such elections will increase the frequency and depth of FCA examinations of these FLBAs. The borrower rights provisions and capital adequacy requirements of the 1987 Act are further increasing FCA's examination tasks.

For the past 2 years, FCA has had no increase in its budget. During the same period, increases in Federal pay, benefits costs, and travel expenses have added over $2 million to FCA's costs. These costs were absorbed through a combination of cost avoidance, expense reduction, and, particularly, deferral of expenditures. While we will continue to contain costs, we cannot continue to defer expenditures essential to support the mandated examination and regulatory functions of the agency.

FCS BUILDING ASSOCIATION FUND

Question. I've heard that a FCS Building Association fund exists within FCA. Since assessments from FCS institutions provide the revenue for this fund, I would like to know the purpose of this fund.

Answer: The FCS Building Association "fund" is actually an annual budget of revenues and expenditures to operate the Farm Credit Building and to lease and furnish eleven (11) field office sites for the Farm Credit Administration.

In 1989, estimated revenues of $4,200,000 will be derived from renting to other tenants, telecommunication, and interest income and assessments from member banks of the Farm Credit System who own the Association. Expenditures of $3,990,000 operate the Farm Credit Building, pay insurance and taxes, and lease field offices.

The annual budget must be approved and authorized by the Farm Credit Administration Board and financial operations are audited semiannually by an independent auditor.

Question. What interaction does the FCA have with the Farm Credit System regarding this fund?

Answer: FCA has no interaction regarding these funds beyond the review and FCA Board approval of the FCSBA annual budget. All interaction with the Farm Credit System is handled by the FCSBA which is a service organization of the FCS not FCA.

Question. I'm also aware that within the Building Association fund a certain amount is set aside to represent FCS interests. It would appear to me that these types of contributions and memberships would best be provided through local associations or district banks. Are FCS assessments used to fund activities such as memberships in organizations and donations to local charities?

Answer: Yes, a fund not to exceed $5,000 is set aside each year so the FCS Building Association may represent the Farm Credit System interests. These interests include insurance rates, real estate and property taxes, utility costs, labor contracts and security, and enhancement of Farm Credit System assets in the Farm Credit Building in McLean, Virginia.

Activities include membership in the Better Business Bureau, Chamber of Commerce and two telecommunication associations, and donations to specific local charities such as the Salvation Army, Food for the Homeless, and Fire and Police Programs. All of these relate to the locality of the Farm Credit Building in McLean, Virginia.

Questions submitted by Senator Tom Daschle

Question. Under the Disaster Relief Act of 1988, the Farm Credit Administration was charged with, "in it's oversight of Farm Credit System institutions, with respect to farmers and ranchers who suffer major losses due to drought, hail, excessive moisture, or related conditions in 1988, ensure that ...institutions exercise forbearance in the collections of principal and interest." In light of that mandate, please indicate what FCA has done to monitor the System's activities and please assess specifically what the Omaha District has done in response to this particular provision. Has FCA done an adequate job in their oversight of this provision and how would you define adequate?

Answer. The Farm Credit Administration's mandate to ensure forbearance in the case of weather-related adversities is stated in the Disaster Assistance Act of 1988 (Public Law 100-387, Section 313.(b)).

A primary focus of most FCA examinations is an evaluation of the particular institution's delinquent and nonperforming loan servicing policies and practices. This is especially true in areas affected by economic and/or natural adversities, such as the Omaha District has encountered. Loans experiencing adversities are reviewed to ensure that collection actions used are appropriate and in compliance with borrower rights provisions of the Farm Credit Act and safe and sound lending practices.

The FCA evaluated the application of borrower rights and forbearance during the recently completed association examinations in the Omaha District. No pervasive problems were found in the forbearance process. The examination of the Farm Credit Bank of Omaha, currently in progress, will address its compliance with applicable provisions of the Disaster Assistance Act.

The FCA's Special Examination Division processes and responds to complaints by borrowers of Farm Credit institutions. This Division has not received any borrower complaints regarding failure by such institutions to exercise forbearance as mandated by the Disaster Assistance Act.

The scope of examination and supervisory activity by the FCA is adequate to ensure System compliance with the Disaster Assistance Act of 1988.

Question. Under the Agricultural Credit Act of 1987, stockholders lists should be available to system borrowers. Please indicate the FCA policy regarding the release of such lists and indicate under what conditions the list would not be made available.

Answer. FCA policy regarding Farm Credit System borrowers and stockholders lists is contained in our regulation Section 618.8310, Lists of Borrowers and Stockholders. This policy was codified in section 4.12A(a), "Provision of Stockholder Lists," of the Farm Credit Act of 1971 by the Agricultural Credit Act of 1987. (See 12 U.S.C. 2184.)

As provided for by both statute and regulation, within 7 days after receipt of written request by a stockholder, each System institution shall provide a current list of its stockholders to such requesting stockholder. The institution may require the individual to certify in writing that he/she will use the list only for communicating with stockholders for permissible purposes (as defined in Section 618.8310(3)) and not make the list available to any person other than the stockholder's attorney or accountant without first obtaining written consent from the institution.

Stockholder lists cannot be used for communications involving commercial, social, political, or charitable causes, communications relating to the enforcement of a personal claim on the redress of a personal grievance, or proposals advocating that the FCS institution violate any Federal, State, or local law or regulation.

Question. During the hearing, a great deal of time was spent on the issue of the borrower's right to sue the Farm Credit System. James Massey in his testimony indicated that borrowers do not have any recourse because the regulations are very vague. Can you please indicate your position on right to sue and whether this should be a right afforded to borrowers?

Answer. The Farm Credit Act of 1971, as amended (the Act), does not expressly grant a private right of action under the borrower rights provisions. While a court may sometimes imply a private right of action from a statute's provisions, FCA cannot grant such a right by regulation. Rather, it is an issue for the courts.

There are several reported court decisions on this issue. In Harper v. Federal Land Bank of Spokane, 692 F. Supp. 1244 (D. Or. 1988), the district court found a private right of action. However, this decision was reversed on appeal by the Ninth Circuit Court of Appeals, which discussed the issue of private right of action in some detail. Harper v. Federal Land Bank of Spokane, Nos. 88-4033 and 88-4120 (9th Cir. June 27, 1989). In Leckband v. Naylor, No. 3-88-167 (D. Minn. May 17, 1988), the district court found a private right of action involving the Federal Land Bank of St. Paul. The case was appealed to the Eighth Circuit Court of Appeals and dismissed as moot, since the plaintiff's claim against the lender was settled during the pendency of the appeal. Leckband v. Naylor, Nos. 88-5301 and 89-5141 (8th Cir. May 5, 1989).

Question. It has been called to my attention that each District pays for the functioning of the Farm Credit Administration through the assessment of fees to cover the regulator's expenses. How does this cost compare to the cost of examining commercial banks and has the cost of regulation increased over the last few years?

Answer: An appropriate comparison of costs is the cost per employee for the overall operations of the agency. On this basis, the FCA currently has the lowest cost per employee of the primary Federal financial regulatory agencies. From 1985 to 1988 the overall cost of operations per employee for FCA decreased from $67,010 to $59,278, or 11 percent. By comparison, the overall cost of operation for the FDIC increased from $56,482 per employee to $69,099, or 22 percent; for NCUA from $53,634 per employee to $67,951, or 27 percent; and for the Office of the Comptroller of the Currency from $58,993 per employee to $66,641, or 13 percent. These comparisons are based on actual expenditures reported in the

Appendices to the Budget of the United States Government, unadjusted for inflation.

Question. How would you rate the FCA's performance in regards to oversight of the borrowers rights provisions and guidance that FCA has provided to system institutions?

Answer. Ensuring compliance with the borrower rights provisions of the Farm Credit Act is an important element of FCA's examination function and, accordingly, the agency has committed considerable resources to this area. Through its examination efforts the FCA has adequately addressed System compliance with borrower rights provisions.

Generally, the FCA's responsibilities in this area, as for other statutory provisions, are twofold: the promulgation of regulations, and examinations to appraise compliance. In this regard, final regulations, enhanced by comments from over 300 sources, were issued September 6, 1988. Additionally, agency directives were issued to the examination staff requiring that each examination specifically evaluate borrower rights compliance and adherence to distressed loan restructuring requirements. Finally, special purpose or enhanced scope examinations to test compliance have been performed in several districts.

The FCA has implemented training programs, in addition to issuing Examination Bulletins and Examination Manual revisions, to ensure thorough and consistent borrower rights evaluations.

Question. Regarding the FCI program and settlement of those accounts once a commercial bank withdraws from the system, you had indicated in an inquiry from a South Dakotan banker, that each FCS institution could negotiate settlements with commercial local banks on an individual basis. Why did you choose to allow each institution to negotiate rather than establishing a uniform rule throughout the country? Is there reason to require that a uniform rule be established?

Answer. To begin, I assume that by reference to the FCI program you are referring to the equities held by commercial banks or other financial institutions (OFI) discounting loans with Farm Credit Banks (FCBs) as prescribed in section 1.7 of the Act and Part 614 Subpart P of the FCA regulations. Under that statutory and regulatory direction, an OFI's loan discounting relationship with an FCB is supported by an investment in the FCB, in the form of nonvoting participation certificates.

Previous and existing regulations have provided direction that required this investment to be of an equal amount as required of the production credit associations (PCAs) within the district, with each district FCB setting its individual capitalization requirements. In addition, the direction provided to the FCBs has required that if there was an equalization of investments within the FCB, such equalization would be accomplished in an equitable fashion for both the PCAs and OFIs. It has been and continues to be FCA's position that this constitutes a debtor/creditor relationship between the OFI and the FCB. As such, the relationship and the resulting capitalization requirements should fall within the purview of the FCB as provided for in its capital bylaws established under the Act and regulatory guidelines.

The FCB's capital requirements are addressed in the Act and newly adopted FCA regulations as described below.

Section 4.3A of the Act explicitly requires the Farm Credit institutions to adopt individual capital bylaws that prescribe the institutions' capital levels and the direction under which the institutions' equities will be prescribed, subscribed, and retired. The FCA's prior approval of such bylaws was specifically removed by the 1987 Act.

Capital and equity-related regulations contained in Part 615 of the FCA regulations (12 CFR 615.5250) formally stated that the prescription, subscription, and retirement of stock (including participation certificates) would be addressed in the FCB's bylaws as adopted by the FCB's board of directors. Pursuant to section 4.3A of the Act, as revised by the Agricultural Credit Act of 1987 (1987 Act), the FCA has adopted revised capital regulations. Contained in these newly adopted regulations are provisions that require the Farm Credit institutions (including the FCBs) to maintain adequate capital levels to meet the minimum capital requirements, assure the institution's continued financial viability and to provide for growth necessary to meet the needs of its borrowers (12 CFR 615.5200). In addition, the institution's board is responsible for establishment of a formal written capital adequacy plan which shall address any projected dividends, patronage distribution, equity retirement, or other action that may decrease the institution's capital level.

Also pursuant to section 4.3A of the Act, the board of directors of each Farm Credit institution is required to adopt capitalization bylaws, subject to the approval of its voting shareholders, that set forth various capital and investment provisions (12 CFR 615.5220). These provisions include the classes of equities and the manner in which they shall be issued, transferred, converted and retired. In addition, the provisions shall include the percentage or dollar amount of equity investment that will be required as set by the board of directors of the institution. The capital bylaws are to be established to enable the institution to meet the minimum permanent capital adequacy standards. In order for the equities to qualify as permanent capital the bylaws must provide that retirement must be solely at the discretion of the board of directors and not upon a date certain or upon the happening of any event such as repayment of the loan, and not pursuant to any automatic retirement or revolvement plan (12 CFR 615.5240).

Equities held prior to January 6, 1988, or issued as a condition of obtaining a loan relationship prior to October 6, 1988, are considered to be "protected stock" (includes participation certificates) under the provisions of the Act. As such, the "protected stock" can only be retired with the consent of the FCA or can be converted by the Farm Credit institution to an equal amount of at-risk stock with the consent of the stockholder.

Question. Contained in the S&L legislation, FCA could develop a new pay structure for FCA employees. Can you please provide for the record, what would you consider an acceptable plan? In addition, please provide for the record, background for the record on the need for such actions.

Answer: FCA has the lowest cost per employee of all Federal financial regulatory agencies based on expenditures reported in the Appendices to the Budget of the United States Government. FCA's pay structure is not competitive with the other Federal regulators or Farm Credit institutions. In most cases, we have been unable to recruit trained examiners from the marketplace. FCA has adopted the costly practice of hiring recent college graduates who must be trained for the full performance level of the job. The agency has undertaken a comprehensive examiner training and commissioning program to ensure that our examiners are adequately skilled and knowledgeable to examine Farm Credit institutions for compliance with statute and regulation. Training these individuals requires a significant investment of agency resources. FCA pay and benefits must be competitive with other regulators if the agency is to retain this workforce once trained and thereby ensure efficient and effective regulation of FCS institutions.

STATEMENT OF JAMES T. MASSEY, EXECUTIVE DIRECTOR, FARMERS' LEGAL ACTION GROUP, INC., ST. PAUL, MINNESOTA AND SISTERS, OREGON

My name is James T. Massey. I am Executive Director of Farmers' Legal Action Group, with offices in St. Paul, Minnesota and Sisters, Oregon. I am testifying today at the invitation of the Chairman, and appreciate the opportunity to appear on behalf of our clients throughout the country.

Farmers' Legal Action Group (FLAG), is a non-profit organization that provides legal education, support and direct representation to farmers and ranchers across the country. Since July 1, 1986, FLAG attorneys have visited 34 states where they have participated in 214 seminars or workshops for farmers, farm advocates, farm financial counselors, attorneys, public officials and concerned members of rural communities.

These events have been sponsored locally by 88 different organizations; some have been national farm groups, some church or legal organizations and some local, grass roots organizations. Total attendance at these gatherings has been 12,743; of these 8,158 have been farmers, 2,706 lawyers, 1,228 advocates and 651 a mix of public officials and interested citizens.

During this same period of time we have written and distributed numerous publications analyzing and explaining the workings of FmHA, FCS, FDIC and the bankruptcy courts, among other topics. Over 100,000 copies of materials written by our attorneys have been distributed. Some examples have been previously submitted to the sub-committee.

FLAG attorneys have also undertaken substantial, policy level litigation on farm credit policy issues. As the sub-committee knows, FLAG attorneys have maintained the Coleman v. Lyng litigation since 1985. This litigation stopped 78,000 illegal FMHA foreclosures in 1987 and led directly to passage of many of the FmHA provisions of the Act. We have also been active in FCS litigation, including Harper v. Federal Land Bank of Spokane, challenging an FCS district policy restricting access to restructuring, and Leckband v. Naylor, challenging an FCS district policy which narrowed the real estate repurchase rights of FCS borrowers. Both cases are currently on appeal in the United States courts of Appeals. We have also consulted with attorneys across the country on literally hundreds of individual farm cases.

Finally, FLAG attorneys worked closely with this sub-committee, the House sub-committee and the Conference Committee in 1987 to draft and refine the FmHA provisions of the Act. Lynn Hayes, now our Litigation Coordinator, actually spent six weeks in Washington during the final weeks of work on the bill.

Our collective experience has given us a unique opportunity to observe, first hand, and evaluate the working of FmHA and FCS lenders and to analyze the application of federal legislation, regulations, and policy through their conduct. This, in turn, enables us to determine whether a problem of implementation is a systemic problem lodged in the legislation, regulations or policy of the lender, or a unique problem caused by the conduct, attitude or relationships between an individual borrower and/or lender.

This analysis, in turn, directs our recommendations for "repair" of problems; some may require amended or new legislation, others, regulatory change and some, litigation, either on a systemic or individual basis. Of course, many problems are found to reflect only individual credit troubles or disputes that must seek remedy through negotiation, mediation or bankruptcy.

Our concern here is systemic problems--those that affect many or all FCS borrowers in particular circumstances. We identify below particular systemic problems we have observed in the implementation of the Farm Credit provisions of the Agricultural Credit Act of 1987. These relate primarily to the "borrower protection" provisions of the Act and the FCA implementing regulations.

In each instance, we will describe the problem, outline our perception of why it is occurring and, where indicated, make recommendations for new or amendatory legislation. We enclose a copy of a recent publication which contains an annotated discussion of many of these problems. (Please note that our recommendations here are minimal; they assume only a surgical "repair" process, not a general overhaul of the bill. Quite frankly, some sections would benefit from substantial overhaul. We would be happy to prepare language suggestions at either the surgical or overhaul level.)

In most cases noted below, regulatory amendment by the Farm Credit Administration could effect the same "repairs" as could new or amended legislation. However, the FCA has essentially abdicated--through its regulations and conduct--any responsibility for enforcement of the borrower protection provisions of the Act. It has declined requests and demands for it to take a more regulatory role, maintaining that it is merely an "arm's-length" regulator of the FCS. That issue itself, is discussed in more detail below. We would be happy to provide the committee with specific language suggestions in any areas where requested to do so.

A. RESTRUCTURING APPLICATION PROCEDURES AND PROBLEMS

To obtain consideration for loan restructuring, an FCS borrower must submit an application. Under the Act, an application for restructuring means a written request:

(a) from a borrower for the restructuring of a distressed loan in accordance with a preliminary restructuring plan proposed by the borrower as a part of the application;

(b) submitted on the appropriate forms prescribed by the qualified lender; and

(c) accompanied by sufficient financial information and repayment projections, where appropriate, as required by the qualified lender to support a sound credit decision.

The final regulations issued by the Farm Credit Administration are identical to the Act with regard to this definition.

Three general problem areas regarding the application for restructuring and the definition of "application" have been observed:

- District policies on what constitutes an application for restructuring--and how it is handled--are unclear and inconsistent throughout the system.
- Borrowers are denied information necessary for preparation of realistic plans for restructuring.
- FCS lenders are rigid in their policies on amendment of restructuring plans.

1. Inconsistency Among the District Policies

The Prefatory comments to the FCA's final regulations indicate that the FCA received comments on the proposed regulations that requested an expansion of the definition of "application for restructuring" in order to create uniform, consistent procedures. This comment identified what is obvious to many FCS borrowers. Each district has not only developed its own set of application forms, but has also developed its own general expectations for the information that is required in connection with the application for restructuring. Moreover, each district appears to have developed its own methodology for evaluating the applications.

In response to this situation and comments submitted to the FCA, the Prefatory Comments to the final regulations provide the following explanation:

> (S)pecific items other than these requirements cannot be identified and accordingly the regulation cannot prescribe such items. Each restructuring application will be different, depending on the type of loan, borrower, lender, and other factors. The information that constitutes a "good faith application" may very well be different in each case and FCA cannot provide an exhaustive list of specifics. For these reasons, FCS should not and cannot create uniform, consistent procedures.

Thus, it has been unclear to borrowers what constitutes a complete application for loan restructuring and what is expected of them in the process. The lack of consistent, articulated standards for the system as a whole is exacerbated by the failure of FCS lender to disclose significant policy information to borrowers and limitations placed on a borrowers ability to submit modified restructuring plans during the application process.

2. Lack of Disclosure to the Borrower.

The Act requires that the notice of restructuring provided to borrowers include:

> (a) A copy of the policy of the lender established under subsection (g) of this section that governs the treatment of distressed loans; and

> (b) All materials necessary to enable the borrower to submit an application for restructuring on the loan.

Again, the final regulations are identical to the statutory language.

The Act further requires the restructuring policy referenced in the notice requirements must include "an explanation of the procedure for submitting an application for restructuring." The final regulations mirror this requirement.

Each FCS district submitted a policy to the Farm Credit Administration pursuant to this provision in the Act. Unfortunately, however, each of the policies submitted simply restates the language of the Act. None provides borrowers with any additional information regarding the restructuring process. Moreover, reports indicate that in all districts it is difficult for borrowers to obtain any additional information regarding the lender's restructuring analysis.

This lack of disclosure presents the borrower with several practical problems. First, he/she may be uncertain as to what information should be submitted in connection with the application. This issue is discussed below with regard to the "preliminary plan" definition. Second, the borrower is at a serious disadvantage in formulating a restructuring proposal. This disadvantage exists because the borrower is not given the criteria and/or formulas used by the lender in evaluating his/her restructuring proposal. Because the acceptance of the proposal is based upon the computation of cost of foreclosure as opposed to cost of restructuring, without knowledge of what costs the lender will include in each category and without knowledge of the formulas used in calculating these costs, it is extremely difficult for a borrower to propose a plan that complies with these undisclosed requirements.

The problems created by the lack of disclosure are emphasized by the fact that an individual plan may involve a complex combination of various restructuring tools. These tools may include reamortization, write-off of principal and/or interest, debt set-aside, and/or partial deed-back. In this context, it is not a matter of simply how much the borrower can afford to pay, but rather what creative restructuring plan can be developed that meets both the needs of the borrower and of the lender. If the needs of the lender are not articulated to the borrower, it may be impossible for the borrower to come up with an acceptable plan.

These concerns were raised in comments submitted to the Farm Credit Administration. The FCA response contained in the Prefatory Comments is as follows:

> FCA disagrees with the comments that requested that the lender provide the costs of foreclosure and restructuring. In most cases this will be impossible for a lender to do until and after the borrower has submitted an application for restructuring. To the extent that this comment meant that a specific list of what the lender is

including in these costs should be provided, as stated immediately above each case may involve different costs. Thus there is no one list of items that objectively will be part of each and every application.

The regulations thus approve the lender's refusal to disclose this type of information to borrowers, either as part of the application process or as part of the subsequent negotiation process.

This lack of information makes it virtually impossible for a farmer to adequately assess his/her own situation in a restructured operation. Essentially, the farmer must "guess" at how the FCS lender will determine its cost of restructure and cost of foreclosure. This makes a "good faith" negotiation process extremely difficult, and in many cases, impossible. The practice of lenders to accept only one application and restructuring plan makes the problem worse.

3. "Plan" Definition Problem

Both the Act and the regulations use the phrase "preliminary plan" in the listing of requirements for an application for restructuring. Because of this phrase, borrowers have submitted initial restructuring plans on the assumption that they will be able to modify these plans through a process of negotiation with the lender. It has been widely reported, however, that FCS lenders treat the initial proposal as final and deny restructuring based solely upon that proposal.

Because borrowers are forced to prepare their applications/plans without full FCS disclosures, as discussed above, the borrower may be denied restructuring solely for lack of adequate information--or exploration of alternatives--and not necessarily because it is less costly to foreclose.

On this issue, the FCA regulations again only mimic the express language of the statue. FCA declined specifically in the regulatory language to set out an open, flexible application/consideration process as suggested by many who commented on the proposed rules.

FCA did in prefatory language to the regulations indicate that the borrowers' initial application should be treated only as a preliminary plan, which may be modified through a "good faith" discussion between the parties. However, in the same prefatory comment, FCA indicates that borrowers should not be allowed repeated amendments of their proposal restructure plans. This conflicting prefatory language has left FCS borrowers and lenders unclear about what FCA interprets the Act to require, or allow.

In the end, many FCS borrowers report that they are allowed only "one shot" in submitting a plan and that there are in fact no subsequent discussions or negotiations between the parties. This results in a great deal of unnecessary resentment and conflict and may well prevent restructuring of many borrower's loans when restructuring would be the less costly route.

4. Recommendations For Legislative Amendment and Change.

i) The Act should be amended to include clear, uniform standards and procedures for the FCS restructuring process. Although individual facts and needs of different borrowers and lenders may require, and result in, some different approaches to loan restructuring, uniform standards and procedures are essential to assure fairness and accountability throughout the system.

ii) The Act should require full and timely disclosure by FCS lenders of (a) the lenders' formulas and calculations for determining the relative cost of restructuring and cost of foreclosure, (b) all necessary documents and information required of the borrower to complete a restructuring application, (c) all standards by which the lender will evaluate the application for restructuring.

iii) The Act should clearly indicate that a preliminary plan is just that, and state an over-arching legislative goal of finding a workable loan structuring approach whenever possible. This language should discourage farm displacement and place a burden on FCS lenders to explore/exhaust all restructuring options before foreclosure, not just those on the borrower's initial application.

B. PROBLEMS IN THE CREDIT REVIEW PROCESS

If the borrower's restructuring proposal is denied, the borrower is entitled under the Act to have that denial reviewed by a Credit Review Committee. The review process has been troubled in three particular areas:

- FCS lenders refuse to make key disclosures necessary to the review process.
- The scope of review is too narrow.
- Independent appraisals have been denied to many borrowers.

1. Disclosure of Information Supporting the Denial

In order for a borrower to adequately prepare for a Credit Review Committee hearing, it is essential that he/she understand the reasons why the restructuring proposal was rejected. Unfortunately, borrowers report that these reasons are often not disclosed to them until the are actually present at the Credit Review Committee hearing. Obviously, disclosure at that time does not allow them sufficient opportunity to prepare a defense of their proposal, or to identify and suggest modifications.

The Act requires that the borrower receive "prompt written notice" of the lender's decision on the application for restructuring and, if the application is denied, an explanation of the reasons for the denial.

The regulations set forth FCA's interpretation of this requirement:

> Where an application for restructuring is denied, the notice shall include:
> (a) the reason(s) for the denial, and any **critical assumptions** and **relevant information** upon which the reasons are based, except that any confidential information shall not be disclosed.

The regulations to not define or explain either the phrase "critical assumptions" or "relevant information."

In many situations, the borrowers and the lender disagree substantially on what information is critical and/or relevant for purposes of disclosure. The borrower is, of course, at a disadvantage in challenging the lender's disclosure because he/she may not be aware of information that is being withheld.

Some explanation of the FCA position on this issue is set forth in the Prefatory Comments. In these comments, the FCA confirms that sufficient information must be provided to the borrower to ensure the borrower's right to a meaningful credit review. The FCA emphasizes, however, that this does not indicate that all information must be provided to the borrower. Under the FCA interpretation, the borrower is only entitled to an explanation of the reasons for the lender's decision and sufficient information supporting those reasons so as to enable the borrower to decide whether to appeal the decision. In some cases, the reason for the denial will be based upon the lender's calculations; and if so, these calculations should be disclosed, but they are not.

Thus, although the FCA comments confirm that the borrower is entitled to an explanation of the reason why his/her restructuring proposal was denied, the FCA regulations and the operating policy observed in the field deny to borrowers in many cases the precise information they need to decide whether to seek review and if so, on which issues. Indeed, the borrower does not even have the ability from this point on in the process to verify the completeness or fairness of the lender's disclosure at all.

The FCA's Prefatory Comments suggest its rationale for limited disclosure even at this stage of the restructuring process. In these comments, FCA states that it "does not believe that a lender must disclose every piece of information and all of its calculations so that a lender will be unable to effectively negotiate with borrowers or compete with other financial institutions." Similarly, the comments indicate that if a lender is "bound by confidentiality restraints" disclosure cannot be made. No explanation is provided for what type of information may be confidential.

In summary, under both the statute and the regulations, a borrower should be entitled to receive and explanation of his/her denial along with the notice of that denial. This is imperative for a realistic and fair review. While we believe that disclosure should be made during the negotiation process to allow the borrower and lender to work together toward a mutually beneficial resolution, the borrower should at a very minimum receive this information in time to utilize it in the credit review process.

2. Scope of the Review

In the Prefatory Comments to the final regulations, the FCA clearly indicates that the Credit Review Committee's function is to review the loan officer's decision. According to this interpretation, it is not appropriate for the Credit Review Committee to undertake any consideration of counter-proposals. The comments specifically state:

> Any counter proposals should have occurred at the lender's prior decision-making stage or before, and **not** during the committee review process that is reviewing the decision that was already made by the lender.

This position, obviously, make the initial negotiation process between the borrower and the lender, and the concept of a preliminary plan, all the more important. It also emphasizes the importance of the disclosure of specific reasons for denial of the plan to the borrower. According to the FCA interpretation, the borrower's only opportunity for overturning the denial is to refute these reasons.

With regard to the borrower's presentation at the Credit Review Committee, the regulations specifically provide that he/she may "submit any documents or other evidence to support the information contained in the unsuccessful loan or restructuring application." The Prefatory Comments to the final regulations, however, confirm that this documentation does not include the submission of any type of counter-proposal. Rather, the documentation must relate to the restructuring proposal being reviewed.

Thus, the borrower is caught in the middle of a dilemma. On the one hand, FCS lenders refuse to provide critical information concerning the restructure application/denial at a time when the borrower needs it. At the same time, the lender will not, and, according to FCA regulations may not, accept a new proposal during the review process, a proposal which could include modifications or additions suggested by information that should have been disclosed at an earlier stage.

3. Independent Appraisals

The Act originally contained provisions that granted borrowers the right to an "independent appraisal" as part of the credit review process in certain restructuring situations. Initially, the statue appeared to limit this right in the restructuring review context to situations in which the qualified lender had demanded additional collateral. The Agricultural Technical Corrections Act of 1988 expanded the right to an independent appraisal to all restructuring application denials before the Credit Review Committee. The final regulations reflect this right.

It is now clear that any borrower before a Credit Review Committee on the denial of a restructuring application can request his/her right to an independent appraisal.

It is not clear, however, what effect this change will have upon borrowers who have already gone through the review process, particularly those who requested and were denied an independent appraisal. Section 1001 of the Technical Corrections Act provides that this change will become effective "as if enacted immediately after the enactment of the Agricultural Credit Act of 1987 (January 6, 1988).

However, FCS lenders have refused to reconsider cases when the issue has been raised. Unfortunately, one of the primary complaints reported regarding the independent appraisal provision relates to the practical lack of objectivity and independence. According to the statutory process, the Credit Review Committee presents the applicant with a list of three accredited appraisers approved by the qualified lender. The borrower must select from this list. In practice, many borrowers report that appraisers listed include FCS contractors, FCS employees, and/or other appraisers with affiliation with the FCS lender. In this situation, the borrowers contend that the appraisal is clearly not "independent."

4. Recommendations For Legislative Amendment and Change.

i) The Act should be amended to require disclosure by the FCS lenders of all reasons for restructuring denials and the basis for those reasons, in a written denial letter or notice in advance of the credit review.

ii) If the initial application/plan process is not changed to require full disclosure by the lender, and an on-going negotiating process, the law should be amended to authorize the Credit Review Committee to propose and accept restructuring counter-proposals.

iii) The law should require appointment of independent (not FCS employees) hearing officers for credit reviews if they are to remain strictly reviews of decisions made by loan officers.

iv) The Act should be amended to require FCS lenders to reconsider every case denied for restructuring where an independent appraisal was not allowed.

C. RESTRICTIONS ON ELIGIBILITY FOR RESTRUCTURING

Loan restructuring under the Act is available to borrowers with "distressed loans." Distressed loans are defined as follows:

> The term "distressed loan" means a loan that the borrower does not have the financial capacity to pay according to its terms and that exhibits one or more of the following characteristics:
> (A) The borrower is demonstrating adverse financial and repayment trends.
> (B) The loan is delinquent or past due under the terms of the loan contract.
> (C) One or both of the factors listed in subparagraphs (A) and (B), together with inadequate collateralization, present a high probability of loss to the lender.

Numerous FCS policies and practices have served to substantially reduce the number of borrowers who may be found in loan restructuring:

- Lenders are given unfettered discretion to identify "distressed loans."
- Lenders sue directly on notes without foreclosure, seeking to avoid restructuring.
- Borrowers in foreclosure prior to January 6, 1988 have been excluded from restructuring eligibility.

- FCS lenders use arbitrary and unrealistic "cost of restructure" computations.
- Cost computations do not allow for short-term "catch-up" of income with land values.
- FCS lenders are extending only "shotgun" restructuring--short-term, high-risk agreements entered under duress.
- Borrowers discharged in bankruptcy are denied restructuring rights.

1. Determination of "Distressed Loan."

The most problematic aspect of this definition is the phrase "a loan that the borrower does not have the financial capacity to pay according to its terms." In some circumstances, there may not be a monetary default, but the farmer believes that he/she cannot continue to make payment son the loan. That farmer may believe that his/her loan is distressed and attempt to apply for debt restructuring. FCS, on the other hand, may take the position that the loan is not distressed. The final FCA regulations grant sole discretion to the lender to make the "distressed loan" finding. The regulations recite the statutory definition verbatim, then add the clause "as determined by the lender."

The prefatory comments to the final regulations address this language as follows:

> The lender must determine whether the borrower has the financial capacity to repay his loan. In order to make such a determination, a lender may have to consider repayment trends on other loans or accounts, where such information is available.... Nothing in the statute or the regulations prevents a borrower from voluntarily contacting a lender if a borrower wishes to discuss restructuring.

This grant of discretion, coupled with the FCS lender's refusal to disclose information, works substantial unfairness on borrowers whose loans are paid current, but who nonetheless are in a very distressed situation.

Reports indicate that this situation is most likely to occur when some type of assignment of income has been made to the lender. For example, when the farmer gives his/her FCS lender a dairy assignment covering milk proceeds, and this assignment is backed up by a valid security interest in these proceeds, the lender may choose to continue receiving its assignment rather than consider the borrower's loan for restructuring.

The borrower in this situation is faced with a complex dilemma. If the borrower declines to pay the FCS lender in an effort to "create" a distressed loan, he or she may be guilty of converting assigned or encumbered proceeds. Moreover, the failure to make a payment will not assure that the loan is classified as "distressed." The FCS lender may still take the position that the borrower has the financial capacity to pay. Moreover, by creating a default, the borrower may lose his/her right of first refusal under the Act. Section 2219a of the Act limits this right to a borrower "who, as determined by the institution, does not have the financial resources to avoid foreclosure."

In the end, the borrower may simply lose the farm for taking action designed only to get the attention of the FCS lender and be considered for restructuring.

In short, the FCA regulation vesting exclusive authority in the FCS lender to determine when a loan is distressed, coupled with the disclosure and review problems noted above, serve further to limit the opportunity of many FCS borrowers to be considered for loan restructuring. And, because judicial review of FCS lenders' restructuring decisions has been held by the courts to be not available, these borrowers are left without a remedy at all.

2. Lenders' Suits On Debt Instrument

As is referenced above, the lender must give notice of debt restructuring to the borrower when his/her loan is determined to be distressed, or not later than 45 days before the lender begins foreclosure proceedings against the borrower. It has been reported, however, that lenders have circumvented the restructuring process by suing the borrower on the debt instrument. The lender's position apparently is that (1) the loan is not distressed because the borrower has the financial means to pay it; and (2) taking legal action on the debt instrument does not fall within the definition of a "foreclosure proceeding."

This kind of circumvention of the Act in cases of truly distressed loans further limits access for borrowers to the restructuring provisions. The spirit and intent of the law appear clearly to prohibit this conduct by FCS lenders.

3. Foreclosure Proceedings Initiated Prior to the Effective Date of the Act

The Act became effective on January 6, 1988 when many FCS foreclosure actions were in process throughout the country. The issue has arisen as to whether the borrowers in these foreclosure proceedings were eligible for debt restructuring consideration. Some Farm Credit System Districts took the position that they were not eligible, and attempted to complete the foreclosure. In response, borrowers brought suit against their lenders for failure to comply with the restructuring provisions of the Act.

This conflict between borrower and lender, in part, arose because of two distinct and somewhat inconsistent provisions of the Act. Supporting the lender's position, 12 U.S.C. section 220a(k) provides that the notice provisions do not apply to a loan that became distressed before January 6, 1988, "if the borrower and lender of the loan are in the process of negotiating loan restructuring with respect to the loan." In contrast, 12 U.S.C. section 2202a(b)(3) provides that "no qualified lender may foreclose or continue any foreclosure proceeding with respect to any distressed loan before the lender has completed any pending consideration of the loan for restructuring under this section."

This issue was addressed by the Farm Credit Administration in the Prefatory Comments to the final regulations. In these comments, the FCA states as follows:

> While the issue is not free from doubt, upon a review of the statutory language, the FCA Board has concluded that as long as the foreclosure proceeding as defined in section 4.14A(a)(4) of the Act was not complete as of January 6, 1988, restructuring rights are applicable if otherwise appropriate.

The comments go on to explain that loans subject to pending foreclosure proceedings that were not complete as of January 6, 1988, are considered "distressed loans" for the purposes of restructuring consideration. The issue of whether a foreclosure proceeding is complete is a matter of state law and, as such, will be subject to variations depending upon state law foreclosure proceedings.

Notwithstanding the FCA's clear statement of purposes on this point, FCS lenders continue to fight applicability of the restructuring provision to cases in process as of January 6, 1988.

For example, in Harper v. the Federal Land Bank of Spokane, the Land Bank argued, prior to publication of the FCA regulations September 14, 1988, that the Harpers were ineligible to apply for loan restructuring because the Land Bank had obtained a state court foreclosure judgment against the Harpers prior to January 6. Chief Judge Owen Panner of the United States District Court for Oregon held, again prior to promulgation of the September 14 regulations, that the Land Bank had illegally "continued" the foreclosure proceeding by seeking a sheriff's foreclosure sale after enactment.

The Land Bank appealed the case, which is now in the United States Court of Appeals for the Ninth Circuit. And, even after publication of the FCA regulations September 14, 1988 the Land Bank stubbornly maintains its argument--contrary to authority and in complete disregard of legislative and FCA intent--that the state court foreclosure ended with judgment. If the Land Bank is successful the Harpers will be denied altogether the right to apply for restructuring. The Spokane position is being maintained in several districts, leaving hundreds of farmers without access to restructuring consideration.

4. "Least Cost" Problems

Under the Act, FCS lenders are to determine their cost of restructuring a loan and their cost of foreclosing the loan. The Act then directs that they take the least cost approach.

Two extremely significant problems have arisen which have excluded huge numbers of borrowers from qualifying for restructuring. These are:

a) Calculations by lenders which include unrealistic cost of restructuring; and

b) Upswing in property values, making foreclosure more financially viable to FCS lenders.

a. Unrealistic Cost of Restructuring Figures

The Act requires FCS lenders to consider, as a cost of restructuring, the present value of interest income and principal foregone in any restructuring agreement. The interpretation of this language, and its application by FCS lenders, presents perhaps our most serious concern with implementation of the restructuring provisions of the Act.

We have found, in reviewing FCS district policies and restructuring computations, that FCS lenders have applied this requirement of the Act in a manner which assumes that all interest income and principal initially anticipated under the loan must be the baseline for that which is foregone. Thus, the "cost" computation for restructuring is based upon the assumption that it would be possible, absent restructuring, for the FCS lender to collect in full on the loan.

If this were actually the case, the borrower's loan would not be categorized as distressed, and the borrower would not be eligible for the restructuring process at all. Effectively, this calculation charges to the borrower's side of the equation (cost of restructuring) the difference between full payment under the existing loan and the payments to be made under the restructured loan. This does not reflect the true cost of foreclosure versus cost of restructuring comparison, especially in a situation where the loan is substantially under-collateralized.

This language of the statute only makes sense if it is interpreted in the context of the "real" net present value of the loan. According to accountants with whom we have spoken, that figure is and can only be the amount the loan is actually worth--that is, the amount the borrower can pay or the amount that would be realized upon liquidation of the loan and collection of other available assets.

The upshot of this problem is that many FCS borrowers have been improperly denied restructuring under the Act. In most cases, this will lead directly to foreclosure or bankruptcy. In at least two districts, we have observed a repeated practice, short of immediate liquidation, which might best be called "shotgun restructuring," which is likely to occur at this point. This problem is addressed in the next section.

b. Property Value Increases

The restructuring provision of the 1987 Act was written from a depressed real estate value perspective. In the mid-eighties, both farm and ranch income and real estate values had reached a low point. In some parts of the country today, farm and ranch real estate values have made a fairly rapid recovery from the low point reached in the mid-eighties. At the same time, the income of many farmers and ranchers has been slow to catch up. As a result, foreclosure is in fact in many cases the least cost alternative, in the short run. That notwithstanding, the long term purposes of the Act are frustrated in many of these situations.

Most farmers and ranchers have had their incomes dramatically reduced over the past decade because of low prices, high interest and steady inflation of input costs. For some, this led to partial or complete liquidation of income producing assets such as equipment and livestock. For others, several years of drought conditions--then the major drought of 1988--led to the same result.

For these farmers now, rebuilding their income--producing operation will take time and often be slower than recovery of real estate values. Thus, the current statutory scheme, at least as it is being interpreted and applied by FCS lenders, makes it impossible for these borrowers to restructure because their income has not kept up or "caught up" with their real estate value.

The FCS provision of the Act--and its implementation--do not provide any restructuring or rebuilding opportunity for these borrowers, something that could be accomplished with partial or complete principal and interest deferrals combined with amortization of deferred payments. This would free up available income for capital investment in the operation, and initial operating expenses.

5. "Shotgun" Restructuring

"Shotgun" restructuring is frequently offered to borrowers who, for one of the many reasons we have discussed here, are denied restructuring "under the Act." This "shotgun" restructuring is typified by two things.

a) It is offered when the borrower is under extreme duress and, having being denied restructuring "under the Act," is faced with few options to avoid immediate foreclosure.

b) It is typically a very short-term alternative, involving a three year financing with a "balloon" payment of all principal and interest at the end of the term. It is frequently accomplished with the farmer executing a "deed in lieu" of foreclosure, then repurchasing the farm on a contract for deed with the balloon.

This "shotgun" approach is unacceptable under the Act. First, the FCS policies, practices and interpretations that have arbitrarily excluded many FCS borrowers from restructuring "under the Act," have created a second tier or class of borrowers to whom only a "shotgun" restructuring is made available. This is not consistent with the Act, nor with sound credit practice. Congress was seeking in the 1987 Act to stabilize the FCS credit situation, and to re-instill credibility in the system. The "shotgun" approach defeats both goals.

The short-term, highly "at risk" real estate loans essentially convert these loans to demand notes normally associated with operating credit. The Farm Credit Act, on the other hand, recognizes that real estate loans should generally be amortized, and serviced, with a long-term perspective. Agriculture has ups and downs--good years and bad; sound credit policies should recognize and anticipate this.

Credibility and confidence in the system have deteriorated dramatically among FCS borrowers, even those who receive "shotgun" restructuring. These borrowers enter agreements because they have no choice. Now, with interest rates rising again and government payments declining, they fear for themselves a repeat, on an accelerated schedule, of the credit crisis that spawned passage of the Act.

6. **Farmers Involved in Bankruptcy**

The Act does not deal specifically with the issue of a farmer-borrower in bankruptcy. There are generally two ways in which the restructuring issue will arise for such a farmer. The first situation concerns a farmer who has received a discharge in bankruptcy. This usually occurs as the result of a Chapter 7 bankruptcy. The second situation arises in the context of a bankruptcy reorganization under either Chapter 11, 12 or 13 of the bankruptcy code. Whether the borrowers' rights provisions of the Act apply in reorganization becomes an issue if and when the FCS lender requests relief from the automatic stay. It also arises with regard to the confirmation of the debtor's plan if he/she attempts to use provisions of the Act as support for the confirmation of that plan.

The final regulations adopted by the Farm Credit Administration Board do not address the issue of whether a farmer's restructuring rights under the Act apply in any of the bankruptcy situations described above. Moreover, the comments to these regulations indicate that the FCA intends to leave the resolution of this issue specifically up to the individual bankruptcy courts. These comments provide as follows:

> Comments were received that requested that the regulations ensure that the borrower rights provisions are applicable to borrowers who are in the process of bankruptcy proceedings and some commenters requested that the regulations apply to situations where an individual's debts have already been discharged in bankruptcy. FCA believes that the issue of whether these provisions are applicable in a bankruptcy proceeding is a determination for the courts to make and therefore has not included such a provision in the regulations.

Thus, the FCA is unwilling to set out a consistent policy regarding the interaction of restructuring rights and bankruptcy.

Presumably most, if not all, of the districts have developed at least an internal policy regarding the restructuring/bankruptcy issues. This policy is not, however, set forth in any of the distressed loan restructuring policies that are distributed to farm borrowers. Moreover, the districts appear to be unwilling to articulate a specific policy. In response to a formal request for information, Farmers' Legal Action Group, Inc. received the following response from the general counsel of the Farm Credit Corporation of America (FCCA), in Denver, Colorado:

> As long as a System borrower is subject to the jurisdiction of the Bankruptcy Court, any proposed loan restructuring must satisfy the additional confirmation standards of the Bankruptcy Code, which

> includes taking into consideration the interests of all creditors. Accordingly, the restructuring of the loan of a System borrower who is in bankruptcy will vary depending upon the facts of each case, taking into account the position of all creditors under the Bankruptcy Code. Stated another way, once the borrower is under the jurisdiction of the Bankruptcy Court, a System lender no longer has the same flexibility to agree unilaterally to a restructuring plan that it had outside of bankruptcy.
>
> Treatment of the loan of a distressed borrower in bankruptcy upon lifting of the stay prior to confirmation or upon dismissal of the case may depend on the specific terms of the Bankruptcy Court's order. Generally, the borrower will have the right to consideration for restructuring under Section 102 of the 1987 Act by dealing directly with the System lender.

In response to the same information request, the Farm Credit Bank of Omaha provided its own individual response. This response is as follows:

> The filing of a Chapter 11, 12 or 13 bankruptcy does not preclude consideration for restructuring.
>
> A borrower who has been discharged in a Chapter 7 bankruptcy is eligible for restructuring provided he meets all other criteria, and is wiling to execute a new note, mortgage or security agreement so that there is a valid contractual obligation between FCBO and the borrower.

There has already been substantial litigation on these issues. Unfortunately, much of this litigation has resulted in unreported decisions. For this reason, it is difficult to monitor the prevailing judicial trend on any of these issues. There have been, however, several important reported decisions which highlight the problems in this area.

First, although several of these decisions have recognized statutory restructuring rights for borrowers who are in or were discharged in bankruptcy, several others have not. For the borrower in these cases the Act is a nullity. Second, inconsistency in the bankruptcy decisions has created both the perception and reality of unfairness in the system. Borrowers under the same Act, same regulations and same federally chartered system receive totally inconsistent results.

Finally, both the inconsistency and uncertainty increase bankruptcy filings and related litigation, a result just the opposite of the Act's objectives. Congress sought to create alternatives to bankruptcy when it adopted the 1987 Act, not to provide an additional revenue source for bankruptcy lawyers. Because so many FCS borrowers are arbitrarily excluded from loan restructuring in the ways set out in this letter, the current uncertainty in bankruptcy court makes it both highly risky and highly attractive as a next step alternative for these borrowers. In either case, it is expensive, both to the borrowers and to the system.

This uncertainty, and the cases in which the courts have ruled against the farmers, further limit the efficacy of the 1987 Act. The litigation alone is extraordinarily expensive, and is being repeated in dozens of bankruptcy courts throughout the country. Farmers paying attorneys and court costs in these cases are using scarce dollars which could otherwise be committed to operating the farm if they were found eligible for debt restructuring under the Act.

7. Recommendations For Legislative Amendment and Change.

i) The Act should be amended to require consideration by the lender of loan restructuring upon application made by any farmer. A notice of the restructuring policies and procedures of the lender should also be sent to each borrower. This process allows a farmer the opportunity to communicate his/her financial problems directly to the lender in a restructuring application without the risk of "creating" a default, and without categorical exclusion by the lender.

ii) The Act should be amended to require the 45-day notice and consideration of debt restructuring prior to any suit by an FCS on a debt instrument--the same requirement that precedes foreclosure.

iii) The Act should be amended to clearly state that FCS borrowers are entitled to be considered for loan restructuring as long as they retain any rights to their property--including redemption--under state law. Even at this stage, a farmer can be assisted to retain the farm with a restructured loan used to redeem from foreclosure.

iv) The Act should be amended to specifically indicate that the restructuring provisions are available to borrowers in bankruptcy or whose debt has been discharged in bankruptcy.

v) (a) The Act should be amended to clarify that foregone principal and interest are costs of restructuring only to the extent they are secured or collectible under the pre-restructured loan situation. (This entire section of the Act would benefit from a re-write in general.)

(b) The Act should be amended to require FCS lenders to seek every option to avoid foreclosure, including the use of partial or complete deferrals, staggered interest rates or other mechanisms to allow farmers' income to "catch up" with recovering real estate values.

vi) The Act should be amended to add specific means of loan restructuring that provide long-term, fully amortized real estate loans for borrowers who qualify. FCS lenders should be prohibited from substituting, as a policy matter, "shotgun" restructuring for amortized restructuring that gives some security to rebuild to borrowers.

D. PROBLEMS WITH REPURCHASE OF INVENTORY PROPERTY

The 1987 Act requires FCS lender to make "acquired" real estate available for re-purchase by previous borrower/owners. Acquired real estate is defined as real estate obtained from borrowers, which typically occurs through foreclosure, bankruptcy or voluntary conveyance. FCA and FCS lenders have distorted and interfered with thought in two ways:

- FCS lenders deny repurchase rights to borrowers by selling at auctions.
- FCS lenders conduct unreliable appraisals and frequently do not disclose them.

1. Conflicts Regarding Manner of Sale

Section 108 of the Act contains two provisions which have spawned a great deal of conflict, and litigation. In Section 108(b), FCS lenders are required, within 15 days after making the initial decision to sell acquired real estate, to notify the former owner/borrower that he/she may purchase the property at its appraised fair market value. If the former owner offers to do so, the lender _must_ agree to the sale, although the Act makes clear that the lender is not obliged to finance the sale. If the former owner offers less than the appraised fair market value, the lender may not sell for less than the appraised value to any third party without providing the former owner the opportunity to match or exceed the third party bid.

Under Section 103(d) FCS lenders are required, if they elect to sell acquired real estate through public bid or auction, to disclose to the former owner the minimum bid and terms and conditions of the sale. If, in the sale process, the former owner is one of two high bidders, the property must be sold to him/her.

The conflict concerning these sections is this--some FCS districts have read these sections as _alternative_ rather than _cumulative_ obligations. Thus, they argue, if they proceed initially with a bid or auction sale, they need not, at any time, offer for sale or sell to the former owner at the appraised fair market value. Borrowers, on the other hand, have read these sections to be cumulative, and to require the FCS lender to offer the fair market sale in _any case_ to the former owner.

In those districts which read the provisions as _alternatives_, public auctions are used to avoid the repurchase provision of the Act. Massive blocks of FCS inventory have gone on the auction block without any opportunity having been given to the former owner to re-acquire his or her farm. In some districts parcels are "batched" for sale, enhancing their development potential and raising the price above appraised fair market as individual farms. As a result, few previous owners have had the opportunity to re-acquire their farms.

This dispute has led to litigation in Minnesota and North Dakota. In two cases, _Leckband v. Naylor_ and _Martinson v. Federal Land Bank of St. Paul_, the United States District Courts have held against the St. Paul bank's "alternative" interpretation. Both cases are currently on appeal before the United States Court of Appeals for the Eighth Circuit. At the same time, and in spite of the court decisions, the "alternative" application of the Act has been codified in Farm Credit Administration regulations.

The problems with the "alternative" interpretation of Section 108 was communicated directly by our organization to the Farm Credit Administration both in comments on its proposed regulations and in a letter to Mr. Naylor requesting FCA intervention and correction. The comments and letter were ignored, and FCA subsequently approved the disputed application of the Act in its final regulations.

2. Appraised Fair Market Value

Disputes have also arisen under Section 108(b) sales concerning the "appraised fair market value." Where these offers have been made to former owner/borrowers, there often is a dispute over the fair market value. FCS lenders frequently use their own staff or contractors to conduct appraisals, then refuse to release the appraisal itself to the former owner; rather, the lender merely cites a dollar figure. The former owner is thus unable to examine or evaluate the appraisal process, or to determine whether to hire his/her own appraiser for another opinion. If the former owner does so, the problem becomes more complex. FCS lenders are not required in the Act or FCA regulations to consider other appraisals, nor does any process exist for obtaining truly independent opinions.

As a result, litigation has also been commenced, challenging FCS refusals to sell at a figure believed by former owners to be a fair market price. This issue is currently before the federal court in Minnesota in Leckband.

3. Recommendations For Legislative Amendment and Change.

i) The Act should be amended to clearly indicate that section 108(d) and (b) are cumulative, not alternative requirements.

ii) The Act should be amended to require release of all appraisals to former owners of FCS-acquired real estate, and to set out a process for obtaining a truly independent, credible appraisal to determine the repurchase price.

iii) The Act should allow review of a denial of offers to purchase acquired real estate when the denial involves an appraisal dispute.

E. FCA PASSIVITY ON BORROWER RIGHTS

The Farm Credit Act requires FCA to adopt regulations necessary to effective oversight and regulation of the Farm Credit System. 12 USC Section 2252(a)(10). It also grants extensive "cease and desist" powers to the FCA to address violations of federal statutes and regulations by system lenders. 12 USC Section 2261 et seq. The FCA has ignored the mandatory and authority of these sections by:

- Promulgating empty regulations which, in virtually every respect, merely restate ver batim the language of the Act.
- Declining to use cease and desist procedures or powers to enforce borrower protections under the Act.

- Refusing to release to borrowers any documents, findings or evidence of action taken on any investigation or cease and desist proceeding.

The FCA has taken no visible enforcement role whatsoever on the borrower protection provisions of the Act. As noted throughout this letter, FCA regulations, for the most part, merely re-state verbatim the provisions of the Act. Indeed, in only one clearly disputed area under the regulations, the question of "cumulative" or "alternative" requirements concerning sale of acquired real estate under Section 108, has the FCA spoken. And here, it has spoken against former owner/borrowers' interests and in favor of strangers.

The FCA's passivity is demonstrated both in the vacuity of its regulations and justifications for rejecting virtually every comment directed at improving them, and its refusal even to acknowledge the seriousness of complaints lodged with it.

This passivity has been justified by FCA through repeated references to its role as merely an "arms-length" regulator of the Farm Credit System. This is a term, and a concept, however, found nowhere in the federal legislation.

The myriad problems, conflicts and lawsuits which have arisen under the 1987 Act made it clear that the FCA has adopted not an "arms-length" approach but, rather clearly, a "hands off" approach to its role. The result is anger, resentment, erosion of credibility among borrowers and the public and, in the end, legions of happy attorneys who earn handsome fees on both sides of legal issues and litigation that could be obviated by a stroke of the FCA pen. The FCA has made it clear, however, that it simply will not respond actively or responsibly to these issues.

Finally, FCA has refused, in response to FOIA requests to disclose to borrowers any documents, findings or orders issued pursuant to its cease and desist power. This renders the procedure absolutely unusable and unavailable for enforcement of borrower's protection.

Recommendations For Legislative Amendment and Change.

i) The Act should be amended to require FCA to publish detailed, implementing regulations and to establish a complaint/enforcement procedure for allegations of borrower protection violations. The amendment should be clear that this is an alternative--not exclusive--remedy, and that FCS borrowers may proceed directly to court if they so choose. (See next section.)

H. JUDICIAL ENFORCEMENT

After years of litigation, it is still unclear whether FCS borrowers may enforce the Agricultural Credit Act of 1987 in court. In Harper, Leckband and Martinson, the courts held they could, at least in part. In Zajac v. Federal Land Bank of St. Paul and Nelson v. Federal Land Bank of Wichita, the courts have held that borrowers have absolutely no enforcement rights under the Act. And, in Troutman v. Federal Land Bank of Spokane, the same judge who granted the Harpers the right to sue denied it to the Troutmans, saying that the federal court would only assure that a borrower got to apply for loan restructuring, but it would not review the conduct of the FCS lender in reviewing that application.

The conflict among--and even within--federal courts occurs because Congress refused in the 1987 Act to include language creating an express, private right of action under the Act. Had it done so--through simple "right to sue" language--most of these cases would either never have been filed, or would be resolved quite simply and with much less cost.

In the absence of an express private right of action in legislation, courts must employ a well-recognized analysis to determine whether congress intended to "imply" a private right of action under a particular piece of legislation. Under this four part analysis (called the Cort v. Ash test for the case in which it was adopted by the Supreme Court) a court must conduct an elaborate and complex analysis of what Congress intended. With respect to the Agricultural Act of 1987, the courts have split down the middle.

This is exactly the process undertaken by the courts in Harper, Leckband, Zajac, Martinson and numerous other federal and state courts, but with mixed results. Again, legions of attorneys are happy; FCS borrowers, and some lenders, are not.

Literally hundreds of thousands, if not millions, of legal dollars are being spent--and will be spent all the way to the U.S. Supreme Court, to determine if Congress "intended" to allow FCS borrowers to sue to enforce their rights under the 1987 Act.

An exceptionally ironic footnote to this problem underscores the significance of the FCA's passivity on borrower protections. The Farm Credit Banks involved in the litigation on this issue, and those who have appeared as AMICI in the courts, have argued strenuously that Congress intended the enforcement of the Agricultural Credit Act to lie solely with the FCA through its "cease and desist" powers. The existence of these powers, argue the lenders, is ample evidence of Congress' intent to make FCA--not the courts--the police officer of the Farm Credit System. They neglect to point out, of course, that the FCA has abdicated this responsibility by refusing to publish substantively clarifying regulations and by refusing, routinely, to become involved in borrowers' complaints alleging FCS lender abuses under the Act.

The upshot is that FCS borrowers are left without any enforcement remedies under the Act at all. Few can afford the expense of major litigation--which will not even be resolved until the Supreme Court speaks--fewer still can afford it and wait. FCA's regulations are not helpful and the FCA is not there to intervene. In short, the system is essentially left to do what it pleases concerning implementation of borrower's rights.

Recommendations For Legislative Amendment and Change.

i) The Act should be amended to include an express, private right of action to any borrower or former borrower who is denied the protections set out in the Act and to require an award of attorney fees if the borrower/former borrower prevails in the litigation.

SUMMARY AND CONCLUSIONS

The recommendations set out in each section above are intended to clarify and enhance the workability of the borrower protections under the Agricultural Credit Act of 1987. They are steps that are necessary if this system is to be made accountable to the law, to Congress and to its borrowers.

It is important, at this point, for Congress to speak clearly to these points. If, for example, Congress intends FCS borrowers to have the right to sue under the Act, the right should be set out clearly in the legislation. If it does not, farmers can turn their attention, their hopes and their dollars back to Washington in an effort to change Congress' mind, rather than spending it on years of aggravating, expensive, divisive and inconclusive litigation. If Congress chooses to take no action on the amendments suggested here, two things are clear.

First, the FCA and the FCS lenders will continue doing what they are doing; Congressional inaction will signal approval of these policies to farmers and their supporters across the country.

Second, litigation and confrontation will continue, threatening efforts to rebuild the credibility of the Farm Credit System, and confidence among its borrowers.

We know of and appreciate the Chairman's commitment to making the Agricultural Credit Act of 1987 work. We share our thoughts and experience here in the spirit of assistance and cooperation in that effort.

Please let us know how we can be of further assistance. Thank you.

PREPARED STATEMENT OF J.D. WOODS, JR., J.D. WOODS, JR., INTERESTS, INC., KATY, TX

Mr. Chairman, members of the committee, I appreciate this opportunity to appear before you today to discuss the implementation of the provisions of the Agricultural Credit Act of 1987 relating to restructuring of distressed loans.

I am a rice, soybean, and oat producer in Texas and Louisiana, and a representative of the Southern rice industry holding a number of elected and appointed responsibilities.

I am appearing here today in behalf of agricultural producers in the Southern part of the country who have experienced difficulties with the administration of provisions of the act.

My testimony does not merely reflect my personal experience, but that of many other producers. I have been contacted frequently by farmers and ranchers who are presently involved in negotiations and litigation with institutions in the Texas and Jackson districts of the Farm Credit System. These producers, in my opinion, are superior farmers who will survive and could save the respective districts substantial sums of money if they are given an opportunity for restructuring of their loans as provided in the act.

Bank management in the South seems philosophically opposed to restructuring distressed loans. This is clearly illustrated by the attached September 30, 1988 Farm Credit Corporation of American report and analysis. Please note that the Omaha district, for example, has restructured 2,924 or 74 percent of its troubled loans, whereas Texas has restructured 29 or 1.1 percent and Jackson, 80 or 1.4 percent of its troubled loans. The restructuring rate for the Texas and Jackson districts did not increase in the following quarter according to the December 31 report of the FCCA.

It appears to me that the banks have a knee jerk reaction to foreclose on distressed loans and the least cost analysis as developed by the banks is only an exercise in manipulation of numbers to support their decision. In these cases the banks have not acted in their own self-interest. If the least cost analysis had been done correctly, the statistics in the South would have been different.

Here are two examples of how the banks manipulate the analysis.

EXAMPLE NO. 1

The bank will acquire an appraisal from its own appraiser that provides an unrealistically high value. This is the beginning number for the least cost analysis. The value which is used to show what it will receive from foreclosure is unrealistic in today's farmland market and cannot be achieved any time in the near future.

The farmer has the right to seek an independent appraisal of his choice, however, the bank then takes the position that the bank is not bound by that appraisal and the value it uses is the *bank's* own decision.

EXAMPLE NO. 2

The farmer yields to the pressure from the bank and submits to foreclosure or agrees to deed his land over to the bank to cancel his debt. The bank will then take the position that it is unwilling to give credit to the farmer in an amount that is anywhere near the appraisal that the bank used in this least cost analysis.

I am aware of many cases in the South of distorted analyses and can provide specific details, if desired, to the subcommittee.

During the past 2 years, I have been involved in litigation initiated against me by the Federal Land Bank of Jackson, Mississippi. Several issues were litigated and litigation costs exceeded $1 million for the bank and $850,000 for me. This includes fees for attorneys, accountants, expert witnesses, appraisers, travel, and other miscellaneous expenses. The only way by which I could obtain the benefits of the borrowers' rights provision of the act was by filing a voluntary petition under chapter 11 of the Bankruptcy Act. My case was completed by final order of the court on May 25, 1989.

It is my belief, which is reflected in the facts, that these banks are not in compliance with the letter of the law nor its intent. That view, I might add, is one widely held by farmers in the area. What is occurring is a denial of fundamental rights given to borrowers by the act.

As a result of the bank's refusal to impartially follow procedures outlined in the act, I have witnessed the following:

1. Borrowers seek protection in the bankruptcy courts and funds available for debt service are used to pay legal expenses.

2. The bank incurs unnecessary legal expenses and staff personnel must be diverted to the litigation.

3. Borrowers are forced to neglect their farming operation while devoting time to court appearances, the preparation of documents, and settlement negotiations. Less net cash-flow is generated that would go to debt service.

4. In cases where the bank is marginally secured or undersecured, the interest that normally would be earned is lost for 1 to 3 years during the litigation.

5. In cases where the bank uses unrealistic, high appraised values of land to bias the analysis toward foreclosure, a long holding period results with no debt service and a much lower land price is ultimately received on the sale of the land.

Some farmers have filed suit in Federal Court in an attempt to gain a fair and impartial determination of the least cost alternative for their distressed loan. The banks have taken the position in court that there is no private right of action given farmers in the act, and therefore, the farmer does not have the right to challenge their decision to foreclose.

The legislative history indicates that Congress believed the Farm Credit banks were acting adversely to their own self-interest as well as that of the farmers by punitive and self-destructive foreclosure policies. It therefore seems incredible that Congress, as the banks suggest, would expect that such Farm Credit banks would become self-policing.

The banks simply claim that their administration of the restructuring provisions of the act is not subject to review even when it is clear that the banks have acted in an arbitrary or capricious manner.

Clarification of the act will come in time as litigation works its way through the courts. In the meantime, hundreds of farmers will lose their land or simply give up when faced with expensive litigation and/or bankruptcy costs. The banks seem to have an inexhaustible supply of time and money to hire lawyers to find ways to avoid the fundamental provisions of the act.

Restructuring is important for troubled borrowers, but more so to *all* borrowers, including those who have remained current on their loans. The policies of some institutions are causing an unnecessary loss of bank capital which ultimately must be paid for by all borrowers, or, in the alternative, the taxpayer.

I ask that the committee provide a clear message to the banks that they must implement the restructuring of distressed loan provisions of the act, and beyond that enable a borrower to obtain an impartial review of his case by a court or other impartial tribunal.

[Affiliations of J.D. Woods, Jr., and September 30, 1988, Farm Credit Corporation of American report and analysis follow:]

J.D. WOODS, JR., RICE INDUSTRY PRESENT AFFILIATIONS

Rice Producer:
  Katy, Texas
  Monroe, Louisiana
The Governor's Agricultural Task Force:
  Member
  Chairman, Research Committee
Texas Rice Research Foundation: Chairman, Board of Directors
Texas Rice Producers Board: Chairman, Board of Directors
National Rice Research Board (Arkansas, Florida, Louisiana, Mississippi, Missouri, and Texas): Chairman, Board of Directors
Texas Rice Producers Legislative Group: Vice Chairman
U.S. Rice Producers Legislative Group (Arkansas, California, Louisiana, Mississippi, Missouri, and Texas): Member
The Rice Foundation: Member, Board of Directors
The Rice Counsel: Member

RICE INDUSTRY PAST AFFILIATIONS

American Rice Inc. (Arkansas, Louisiana, Mississippi, and Texas): President, Chairman of the Board, CEO

COMBINED FCBs/FLBAs/PCAs
(Including FICB of Jackson and Jackson FLB/FLBA in receivership)
LOAN PERFORMANCE INFORMATION
SEPTEMBER 30, 1988

	Springfield	Baltimore	Columbia	Louisville	Jackson	St. Louis	St. Paul	Omaha	Wichita	Texas	Sacramento	Spokane	Combined
LOAN AMOUNTS (in Thousands)													
Performing	[illegible]	[illegible]	$3,747,300	[illegible]	$1,340,256	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Restructured (SFAS No. 15)*	[illegible]	[illegible]	[illegible]	[illegible]	17,977	[illegible]	262,730	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Other High-risk	[illegible]	[illegible]	[illegible]	[illegible]	261,142	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Nonaccrual	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Total Loans	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
NUMBER OF LOANS													
Performing	[illegible]	49,230	77,905	[illegible]	21,230	59,230	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Restructured (SFAS No. 15)*	[illegible]	[illegible]	67	[illegible]	[illegible]	[illegible]	5,131	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Other High-risk	[illegible]	[illegible]	[illegible]	2,017	[illegible]	[illegible]	[illegible]	[illegible]	770	[illegible]	[illegible]	[illegible]	[illegible]
Nonaccrual	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	2,077	[illegible]	[illegible]	[illegible]	[illegible]
Total Loans	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

*Restructured loans consist of accruing loans on which monetary concessions have been granted to borrowers. For purposes of this report, this classification does not include loans on which monetary concessions have been made that remain in nonaccrual status nor loans on which repayment extensions and reamortizations have been granted to borrowers.

Analysis - FCCA Summary Report of Condition and Performance of Farm Credit System Quarter Ended 9-30-88 Page 32

	Springfield	Baltimore	Columbia	Louisville	Jackson	St. Louis	St. Paul	Omaha	Wichita	Texas	Sacramento	Spokane	Combined
% of System Loans	3.7	7.7	12.5	13.3	4.1	10.0	15.3	9.1	7.9	6.8	4.3	5.4	100.1
% of System Restructured Loans	0.2	0.4	0.7	4.4	0.8	5.5	49.9	28.4	6.4	0.3	1.6	1.6	100.2
% of System "Bad"* Loans	0.6	1.8	8.0	11.4	9.8	10.3	29.3	7.0	6.1	4.5	4.0	7.3	100.1
Restructured vs % of "Bad"* Loans	5.7	3.8	1.5	7.0	1.4	9.6	31.0	74.0	19.0	1.1	7.4	4.1	18.2
"Bad"* Loans vs % of Loans	1.3	2.0	5.5	7.4	20.7	8.9	16.5	6.6	6.7	5.7	8.0	11.6	8.6

Conclusions:

(1) Restructuring is the policy of St. Paul, Omaha, and Wichita Districts.

(2) Foreclosure is the policy of Columbia, Jackson, and Texas Districts.

(3) Springfield and Baltimore Districts do not have significant loan problems.

(4) Foreclosure is the primary policy but with restructuring a secondary alternative in Louisville, St. Louis, Sacramento, and Spokane Districts.

(5) From other sources of information it is clear that the 1987 Agricultural Credit Act has not prompted any significant changes in the handling of problem loans by the various Farm Credit Districts.

*"Bad Loans" - Other high risk and non accrual

PREPARED STATEMENT OF FLOYD T. NETH, FARM MANAGEMENT CONSULTANT, DAPHNE, AL

SUMMARY AND CONCLUSIONS

The Agricultural Credit Act of 1987 constitutes an agreement between the Farm Credit System and the American people whereby the American people have provided $4 billion to rescue the System from bankruptcy and the System has agreed to grant concessions to its distressed borrowers. The Jackson Farm Credit District has refused to embrace borrowers' rights as follows:

(1) It has failed to act in good faith in granting the previous owner his right of first refusal to lease or purchase acquired property.

(2) It has subverted the loan restructuring process.

(3) It has used our judicial system, designed to uphold the law, to deny access to the provisions of the 1987 law.

All this has resulted in great economic cost to the institutions of the Jackson District and the farmers they are intended to serve.

The Congress should strongly consider measures to, in the words of Congressman Ed Jones, "ensure that full advantage is taken of the provisions of the new law" (1987 act).

LIMITED COMPLIANCE BY JACKSON DISTRICT

The "borrowers' rights" section of the Agricultural Credit Act of 1987 is the most pervasive borrowers' rights package ever enacted by the Congress of the United States. The whole thrust of that package is to require the Farm Credit System to substitute economic decisions for punitive decisions; to stop the emphasis on shifting blame for the excesses of the past and get on with the restoration of the economic health of the System and its borrowers.

My experience as a farmer who has applied for loan restructuring and repurchase of foreclosed property in reliance on the act and as a farm management consultant engaged in helping other farmers take advantage of the rights mandated by the act is that *compliance by the Jackson District is quite limited.* This conclusion is confirmed by conversations with other farmers who have applied for borrowers' rights and by lawyers and farm management consultants who are helping farmers apply for loan restructuring and right of first refusal to lease or repurchase acquired property.

Had the Jackson District been as ingenious in developing plans for helping farmers overcome their financial distress as it has been in inventing schemes to avoid compliance with borrowers' rights, many of the farmers whose loans classified as nonaccrual or high risk made up 40 percent of the $1.6 billion in loans of the Federal Land Bank of Jackson when placed in receivership May 20, 1988, would by now be well along the road to recovery.

But even before the act was signed it was clear that the Jackson District had no intention of embracing borrowers' rights. Federal Land Bank of Jackson completed more farm foreclosures in Baldwin County, Alabama during December 1987, after action on the Senate and House bills was complete, than during any other month since the Great Depression. More than 10 percent of all the farm foreclosures completed during the last 50 years in Baldwin County, Alabama, by Federal Land Bank of Jackson were completed in December of 1987. That is the same month Congress completed the act which most observers expected to bring an end to massive farm foreclosures.

SCHEMES TO DENY PREVIOUS OWNERS THEIR RIGHT OF FIRST REFUSAL

(1) Acquired real estate for which an election to sell had been made before the 1987 act was signed was simply not offered to the previous owner as required by the 1987 act.

(2) Acquired real estate for which an election to sell had been made before the 1987 act was signed was offered to the previous owner, but at an inflated price. The following statement is included in letters through which such offers were made. "Since we acquired your property prior to January 6, 1988, this right does not apply to you. However, in the spirit of the act . . . ." (See exhibit A—Letter Sent to Previous Owner With Offer to Sell Acquired Property.)

(3) Offers to lease acquired property made by other than the previous owners are simply rejected in order to avoid giving the previous owner the right of first refusal to lease.

(4) Acquired property is simply leased to third parties without first offering it to the previous owner.

(5) Representation is made to the previous owner that the acquired property was under a purchase, lease, or lease-purchase agreement at the time the 1987 act was signed and is therefore exempt from the act.

(6) The *right of first refusal* is interpreted to be specific to the previous owner and not available to the estate of the previous owner or its beneficiaries.

(7) Previous owner is denied access to appraisals made or used by the Jackson District on the basis that the right of access to documents granted by the 1987 act applies only to *current borrowers*, not to *former borrowers*. This prevents appraisals in the files of the Jackson District, made for other purposes, from being used to expose inflated prices in right of first refusal appraisals. (See exhibit B—Denial of Previous Owner Request of Appraisals.)

(8) Appraisals are made by "accredited" in-house appraisers or outside "independent" appraisers with strong ties to Jackson District institutions. Such appraisals are typically 15–50 percent higher than those of truly independent qualified local appraisers.

(9) Representation is made that the property is intended to be sold through a public bidding process, even though it may have appeared on *Bank Owned Property List*, used in offering properties for sale by private treaty.

(10) The term, "is acquired," as used in the *Right of First Refusal* section of the act, is interpreted by the Jackson District to be a present and future tense verb, meaning that the right of first refusal applies only to property acquired after the act was signed. The alternative, and more logical interpretation in the context of the 1987 act, is that "is acquired" is a time independent verb, referring to past, present, and future, so that property acquired at any time is subject to first right of refusal.

(11) Even at its public auctions the Jackson District seeks to avoid giving the previous owner his right of first refusal. Whereas the Columbia District allows the previous owner to purchase acquired property by matching the highest bid of the auction, the Jackson District allows the bidder whose bid is matched to raise the bid.

(12) When a previous owner desiring to exercise his right of first refusal, denied that right by one or more of the aforementioned schemes, files suit to have his right enforced by a Federal Court he is denied a hearing on the merits by endless litigation on the question of whether there is a private right of action for enforcement of the 1987 act. Some Federal Courts have decided there is, some that there is not. (Exhibit C—FCS Right of First Refusal—the Conflict Persists, by Christopher R. Kelley.)

The policy of the Jackson District has clearly been to deny first right of refusal. But repurchase under the right of first refusal, which accomplishes an immediate sale for cash at the current fair market value, typically achieves the highest possible recovery. It avoids sales commissions, advertising, long inventory periods, surveys, and management costs, which together typically reduce the net recovery to below 75 percent of the fair market value and payment is in cash without the usual cash discount. *One has to wonder what can be motivating the Jackson District to deny the right of first refusal!*

SCHEMES USED BY THE JACKSON DISTRICT TO DENY A BORROWER'S RIGHT TO DISTRESSED LOAN RESTRUCTURING

(1) Foreclosures which had been initiated before the 1987 act was signed were simply continued without offering the option of applying for loan restructuring. (See exhibit D—Jackson District Explanation for Continuing Foreclosures Initiated Before January 6, 1988.)

(2) The cost of foreclosure is understated. (See exhibit E—Example—Cost of Foreclosure vs. Cost of Restructuring; Massaging the Numbers.)

(a) The appraised value of the assets is inflated—typically by about 15 percent.

(b) "The time a loan is maintained as a nonperforming asset" is not determined by any statistical study of the Jackson District records, but is arbitrarily selected for each individual case to influence the result.

(c) The institution frequently represents that it has a long list of ready and able buyers waiting to purchase the property to be foreclosed so that the holding period will be "negligible."

(d) The Jackson District maintains that the price of farmland is on the rebound so that holding property in inventory does not significantly increase the cost of foreclosure; also that the real estate market is so broad that foreclosures resulting from denying restructuring will not depress the market.

(e) The institution usually claims that its list of buyers ready, able, and willing to purchase the property at full appraised value precludes any need for advertising or selling agents' commissions.

(f) Claims are usually made that foreclosure papers are ready for immediate filing so that there will be no costs due to delays in completing foreclosure. Furthermore actions incidental to preparing for sale of the property are taken concurrently so that delays are minimal.

(g) No allowance for cost of litigation should be used when computing cost of foreclosure since it is indeterminant in any particular case. Yet the information I have gathered in preparation for this hearing shows that, due to the intransigence of the Jackson District, litigation occurs in about 95 percent of the cases.

(3) The amount of the recovery to be realized by restructuring is usually challenged.

(a) Cash-flow projections are usually termed "unrealistic."

(4) When the restructuring plan is so carefully constructed and the applicant has accumulated numbers to successfully challenge those used by the institution so that the cost of foreclosure cannot be shown by the institution to be less than the cost of restructuring the restructuring proposal will be denied on purely subjective grounds such as:

(a) The applicant has allowed assets to be dissipated.

(b) The applicant refuses to pledge all available assets as security for the restructured loan for example:

(I) His life insurance.

(II) His off-farm pension fund.

(III) Unencumbered assets that serve as the basis for loans frown other lenders.

(IV) Assets of family members not engaged in the farming operation.

(c) All debt payment not included in cash-flow.

(d) Restructure proposal is not the least cost alternative.

(e) Other alternatives available which will result in greater return to lender. (Often such alternatives are proposed to replace plans which have been rejected as unrealistic; but the alternative proposed is less realistic than the plan rejected.)

(5) The Jackson District has steadfastly refused to consider any restructuring proposal which requires that the loan be written down to less than the current market value of the collateral as determined by the institution—typically inflated by about 15 percent. A realistic estimate of the cost of foreclosure will usually allow a write-down at least to 75 percent of the current fair market value of the property as determined by a qualified unbiased appraiser.

(6) The Jackson District has offered "restructuring" proposals to some distressed farmers which consist only of a short term reduction in interest rate which do little to return the operation to viability. The documents which the farmer is required to sign extinguish any right to further loan restructuring. (See exhibit F—Pre-emptive Loan Restructuring.)

That most of the claims used to support the computation of the cost of foreclosure by the Jackson District, itemized in (2) above are without merit is supported by studies I made in May 1988, to support my computation of the cost of foreclosure for a restructuring proposal I helped prepare. These studies show that a reasonable time to use for computation of carrying costs could be more than 900 days. (See exhibit G—Constants for Computing Cost of Foreclosure.) Further bias of the Jackson District against restructuring is indicated by a recent article in the *Southeast Farm Press*, entitled, *Sunbelt Farmland Values Turn Higher*, which quotes Mike Carter with Federal Land Bank of Jackson Real Estate Division: "Little is moving, however. Prices don't seem to be much above a year ago, but we think the decline has bottomed out and expect to see increased values. My analysis of prices received at Federal land bank auctions, March 5, 1988, and May 6, 1989, in northeast Louisiana, and March 12, 1988, and April 21, 1989, in northeast Mississippi, all organized by Mr. Carter's group, shows an annual rate of *decrease* of 3.4 percent for northeast Mississippi and 11.5 percent for northeast Louisiana. (Copies of the two analyses are available on request.)

The policy of the Jackson District has been to discourage loan restructuring.

CONTRAST WITH FARMERS HOME ADMINISTRATION RESTRUCTURING

The Farmers Home Administration, in compliance with the 1987 act, sent to each delinquent borrower a comprehensive package of information to be used in applying for forbearance and loan restructuring. Included in this is a section which explains "Net Recovery Value" and how to compute it by DALR$. (See exhibit H—exhibit J of subpart S—Net Recovery Value.)

When I recently requested the values to be used for computing net recovery value from State FmHA Directors for Alabama, Louisiana, and Mississippi, all supplied the information without question. By contrast the institutions of the Jackson District have steadfastly refused to provide such information, saying it is confidential and different for each case. Publishing of the data by FmHA ensures uniformity in handling similar cases. Withholding such information by the Jackson District encourages the loan officers to decide each case according to their personal pleasure, almost guaranteeing maximum conflict.

ILLEGAL LOAN AGREEMENT PROVISION

The Federal Land Bank of Jackson, as late as March 1988, was continuing to use loan agreements containing the following provision made illegal by the 1987 act. Exhibit 1—Louisiana Act of Credit Sale and Mortgage by the Federal Land Bank of Jackson, shows the illegal clause underlined. An equivalent clause is contained in the Federal Land Bank Mississippi Deed of Trust and Security Agreement.

LITIGATION WITH NO ECONOMIC JUSTIFICATION

(1) Farmers whose restructuring proposals are feasible and comply fully with the guidelines contained in the act are, nonetheless, forced into chapter 11 or 12 bankruptcy proceedings, increasing the cost to the borrower and discouraging other farmers from applying for loan restructuring, while elevating the cost to the institution.

(2) Deficiency judgment proceedings are undertaken for which the cost far exceeds any possible recovery. The sole purpose seems to be to continue the pain and suffering to the farmer and his family beyond the foreclosure.

(3) Failure to comply in good faith with the right of first refusal to repurchase acquired property inevitably leads to lawsuits which are strung out by the Jackson District to crush the previous owner with litigation costs. This course is pursued by the Jackson District in spite of the costs to itself of the litigation and the fact that sale of properties through first right of refusal typically recovers up to 40 percent more than other liquidations.

NO RECOURSE FOR BORROWERS OF FEDERAL LAND BANK OF JACKSON IN RECEIVERSHIP

(1) *No opportunity to Change Management of Receivership.*—Member-borrowers of all institutions of the Farm Credit System, except the Federal Land Bank of Jackson in receivership and a few small associations in liquidations, have the opportunity to change directors and management to correct abuses. Regulations are in place which allow any borrower to request and receive a mailing list of members for the purposes of communicating with other members and soliciting proxies. Management of the Jackson receivership, on the other hand, cannot be changed by any initiative of its member-borrowers.

(2) *No Private Right of Action.*—The United States District Court for the Southern District of Alabama, Southern Division, in what has proved to be a landmark decision for the Jackson District *(Neth* vs. *Federal Land Bank of Jackson)* found that "Congress has not provided a private right of action under the act" (the Farm Credit Act of 1971, as amended in 1985 and 1987). Until such time as an appeal of this decision is heard and a decision is rendered by the United States Court of Appeals for the Eleventh District it is unlikely that any case will be heard to review the actions of the receiver either as to compliance with borrowers' rights or other abuses of discretion.

(3) *Enforcement of Borrowers' Rights by Farm Credit Administration.*—As far as borrowers' rights are concerned, the only role acknowledged by the FCA in its reports is its obligation to promulgate rules pursuant to the act; nowhere is there any mention of enforcement of borrowers' rights. Despite overwhelming evidence of failure of the Jackson District to implement borrowers' rights mandated in the 1987 act, I know of no action taken by FCA to correct this abuse.

With no enforcement of borrowers' rights by FCA, no right to review by any Court, and no right to change directors and management, borrower-members of Federal Land Bank of Jackson are without any means whatsoever to enforce borrowers' rights granted them by the 1987 act.

"Borrowers' rights" in the Jackson District is no more than a cruel hoax!

THE AGRICULTURAL CREDIT ACT OF 1987—AN AGREEMENT BETWEEN THE FARM CREDIT SYSTEM AND THE AMERICAN PEOPLE

In January 1987, the Farm Credit System went, hat in hand, to the 100th Congress to ask for financial assistance to rescue it from bankruptcy. Congress responded with $4 billion in U.S. Treasury funds. But the rescue was not unconditional. The "quid pro quo" was that the System (A) alter the terms of its loan agreements with its financially distressed farmer-borrowers if (1) by so doing, in any particular case the farmer could reasonably be expected to work out of his financial difficulties, and (2) to do so would not be more costly to the System than enforcing the original loan agreement; and (B) to give a previous owner whose property had been acquired by the System a right of first refusal to purchase or lease the acquired property. Granting of these "borrowers' rights" is not discretionary, as in the 1985 Farm Credit Amendments Act, which provided no Federal funds to the System. Borrowers' rights were made mandatory in the 1987 act, as a condition for Federal funds. Thus a contract was entered into between the Farm Credit System and the American people. While U.S. Treasury funds have been made available to fulfill the contractual obligation of the American people, the Farm Credit System has failed to honor its corresponding contractual obligation to grant borrowers' rights in accordance with the provisions of the contract.

The statement of Congressman Ed Jones to the U.S. House of Representatives on December 19, 1987, could now apply to the 1987 act as well, and I quote:

"In summary I want to let the System and FCA know that together they have destroyed the integrity of the 1985 Farm Credit Act and necessitated this year's legislation. The Congress cannot tolerate such irresponsible action again and we expect the System and its regulator to diligently undertake their respective responsibilities and to cooperate in those matters that are necessary to ensure that full advantage is taken of the provisions of the new law."

The actions taken by Congress as a result of this oversight hearing will show to what extent it will indeed "tolerate such irresponsible action."

[Exhibits A-I attached to the prepared testimony of Dr. Neth follow:]

Exhibit A - Letter Sent to Previous Owner With Offer to Sell Acquired Property.

The attached letter is one of a number of such letters sent by Federal Land Bank of Jackson in March, 1988, to Alabama farmers whose foreclosed real estate was held in its inventory on January 6, 1988. In one such letter the previous owner was given the right to repurchase in March, 1988, for $441,000 property acquired by FLB of Jackson in December, 1987. The previous owner desired to purchase the property but thought the "appraised" value seriously inflated. The appraised value, determined in April, 1988, by a highly respected local independent accredited land appraiser hired by the previous owner was $288,000. The value at which the property was offered had been inflated by more than 50 %.

Farm Credit Banks
of Jackson

Federal Land Bank
Federal Intermediate Credit Bank
Bank for Cooperatives
1800 E. County Line Road, P.O. Box 16669
Jackson, Mississippi 39236 0669
601/957-4000

CERTIFIED MAIL

March 9, 1988

RE: Previous Owner's Right of First Refusal
to Repurchase Property

Dear

Pursuant to the Agricultural Credit of 1987, agricultural properties acquired by the Federal Land Bank of Jackson on and after January 6, 1988, are subject to the previous owner's right to repurchase such property under certain conditions. Since we acquired your property prior to January 6, 1988, this right does not apply to you. However, in the spirit of the Act, we are giving you the opportunity to purchase at the appraised value of $400,000.00 in cash only the property in inventory which was previously owned by you as described on the attached sheet. According to the Act, the Federal Land Bank of Jackson is not required to provide financing to the previous owner in connection with the sale of acquired property.

If you wish to purchase the property, we must receive, within thirty-three days from the date of this letter, written notice of your election to purchase the property. If we do not receive such notice within the thirty-three day period, then you will no longer have an opportunity to purchase the property at appraised value.

If we receive, within the thirty-three day period, your written offer to purchase the property for $ 400,000.00, we will enter into a contract to sell the property. The Federal Land Bank of Jackson is obligated to accept the offer and close the sale within 30 days.

If we receive, within the thirty-three day period, your written offer to purchase the property for less than the amount stated above, then we may accept or reject your offer. If we accept your offer, we will enter into a contract to sell the property to you at the price offered. If we reject your offer, we may accept an offer at a higher price from a third party without prior notice to you. However, if a third party offers to purchase the property at a price equal to or less than the price previously offered by you, or on materially different terms and conditions, we must notify you.

Please note that this opportunity to purchase is a one time right and is only available to you.

If you are interested in discussing this matter further, please contact me at:

(205) 947-7316

P.O. Box 1578, Robertsdale, AL 36567

Sincerely,

Joe W. Brock
Real Estate Consultant

JWB/cb

Exhibit B - Denial of Previous Owner Request for Appraisals.

**Farm Credit Banks
of Jackson**

**Federal Land Bank
Federal Intermediate Credit Bank
Bank for Cooperatives**
1800 E. County Line Road, P.O. Box 16669
Jackson, Mississippi 39236-0669
601/957-4000

CERTIFIED MAIL RETURN RECEIPT

RE: Request for Prior Appraisals

Dear

As per our phone conversation of March 8, 1988 and receipt of your letter dated March 8, 1988, which is attached as "Exhibit A", our legal counsel has ruled that the Federal Land Bank of Jackson is not obligated to provide appraisal reports to former borrowers. This provision of the law that you reference in your letter is only applicable to loans with existing borrowers. Therefore, we are declining your request for the appraisal data requested.

Should you have further questions, please don't hesitate to ask.

Sincerely,

James M. Carter
Assistant Vice President

JMC/aaf

Enclosure

The Farm Credit System

Exhibit C

FCS Right of First Refusal - The Conflict Persists

Christopher R. Kelley

With the Eighth Circuit's recent dismissal of *Leckband v. Naylor*, Nos. 88-5301 MN and 89-5141 MN (8th Cir. May 5, 1988), by stipulation, and *Martinson v. Federal Land Bank of St. Paul*, No. 88-5202 ND (8th Cir. May 5, 1988), on grounds of mootness, the prospects for an immediate appellate decision on the issue of whether Farm Credit Banks have to offer the right of first refusal based on the property's appraised value before offering the property at auction have evaporated. Complicating matters is the decision of *Payne v. Federal Land Bank of Columbia*, No. A-C-88-145 (W.D.N.C. April 17, 1988), in which the court held that the right of first refusal did not have to be extended in any particular order, a result contrary to the results reached in *Leckband* and *Martinson*.

Section 108 of the Agricultural Credit Act of 1987, now codified at 12 U.S.C. Sec. 2219a (West Supp. 1988), granted former owners of property acquired by Farm Credit Banks the right of first refusal in repurchasing that property. The plaintiffs in *Leckband*, *Martinson*, and *Payne* each argued that the two prescribed alternatives for implementing that right, purchase at appraised value or purchase at auction by, in effect, matching the highest bid, had to be offered in that order. The district courts in *Leckband* and

Martinson agreed with the plaintiffs, the *Payne* court did not.

Intertwined with the right of first refusal issue in the *Leckband* and *Martinson* appeals, but not addressed expressly by the district court in *Payne*, was the issue of whether ~~that~~ the 1987 Act implied a private cause of action against Farm Credit Banks for violations of the Act. That issue is still before the Eighth Circuit in *Zajac v. Federal Land Bank of St. Paul*, No. 88-5353 ND (8th Cir. argued Dec. 12, 1988) and before the Ninth Circuit in *Harper v. Federal Land Bank of Spokane*, No. 88-4033 (9th Cir. argued May 2, 1989). Two federal district courts recently held that no such implied cause of action exists. *Wilson v. Federal Land Bank of Wichita*, No. 88-4058-R (D. Kan. Jan. 30, 1989); *Neth v. Federal Land Bank of Jackson*, No. 88-0324-B-C (S.D. Ala. Dec. 30, 1988).

Exhibit D - Jackson District Explanation for Continuing Foreclosures Initiated Before January 6, 1988.

When the farmer who received the attached foreclosure notice from First South Production Credit Association asked for an explanation, its representative said that attorneys for the Jackson District had advised that the 1987 Act would not affect any foreclosure initiated before January 6, 1988, the date the Act was signed. A letter sent in November, 1987, which advised the farmer of (1) his right to apply for forbearance and (2) that his PCA stock was being canceled and applied to the loan balance constituted "initiation" of foreclosure proceedings for purposes of applying the 1987 Act.

TRAVIS & TRAVIS
ATTORNEYS AND COUNSELORS AT LAW
POST OFFICE BOX 590
HATTIESBURG, MISSISSIPPI 39401

SIMEON E. TRAVIS 1866 - 1952
JAMES KEARNEY TRAVIS 1905 - 1968
JAMES KEARNEY TRAVIS, JR

601-582-5881

March 7, 1988

57

Dear

Re: Indebtedness to First South Production Credit
Association of Atmore, Alabama

First South Production Credit Association of Atmore, Alabama, has appointed me as Substitute Trustee under the Deed of Trust which secures your indebtedness to the bank. As you know, this Deed of Trust is dated November 6, 1985, and it secures an indebtedness in the face amount of $660,559, and is recorded in Land Deed of Trust Book 452 at Pages 385-389 on file in the Office of the Chancery Clerk of Pearl River County, Mississippi. The bank has further advised that default exists in payment of the indebtedness and in performance of the terms and conditions of the Deed of Trust, and it has requested that I, as Substitute Trustee, proceed to foreclose the Deed of Trust.

I have accordingly posted my Substituted Trustee's Notice of Sale and delivered the notice to the Poplarville Democrat, the local newspaper, for publication in its issues of March 10, 17, 24, and 31, 1988. The sale is scheduled for Friday, April 1, 1988. I sincerely hope that you can make arrangements to pay your indebtedness before the scheduled sale date. A copy of my Substituted Trustee's Notice of Sale is enclosed so that you will be fully advised.

Sincerely,

J. Kearney Travis, Jr.

J. Kearney Travis, Jr.
Substitute Trustee

ch

Enclosure

cc: First South Production Credit Association
of Atmore, Alabama

Exhibit E

EXAMPLE: COST OF FORECLOSURE VS. COST OF RESTRUCTURING

(1) Cost of Foreclosure

(A) Loan Balance				$ 400,000
(B) Payment Capacity - $20,000/year for 20 years.				
(C) Liquidation Value of Collateral:				
(I) Selling Price (Appraised Value)			$300,000	
(II) Cost of Liquidation:				
(aa) Payment of Prior Liens		$ 1,200		
(bb) Annual Costs:				
Taxes & Assessments	$ 2,500			
Depreciation	10,000			
Management Costs	1,000			
Change in Value of Property (-15%) x (300,000)	45,000			
Lost Income 9.5% x 400,000	38,000			
	$96,500			
Total 2 years 2 x 96,500		193,000		
(cc) Resale Expenses:				
Commission (8%)	$24,000			
Advertising (2%)	6,000			
Closing (0.5%)	1,500			
		31,500		
Total Cost of Liquidation			225,700	
Net Recovery				74,300
Cost of Foreclosure				$ 325,700

(2) Cost of Restructuring

(A) Value of Restructured Loan: Present Value of 20 Annual Payments of $20,000 @ 7.65 %	$ 201,600
(B) Administrative Costs	2,000
Net Value of Restructured Loan	$ 199,600
(1) (A) Loan Balance	400,000
Difference: Cost of Restructuring	$ 200,400

MASSAGING THE NUMBERS

Assumptions:

1. Borrower makes 20 annual payments of $20,000 each.
2. Changes in value of property: -15%, 0, +15%.
3. Initiation of foreclosure to liquidation of property: 1, 1.5, 2 yr
4. Discount rate: 7.65%, 9%, 12.25%.*

Case	Change In Value (Ann. %)	Liquidation Time (Years)	Discount Rate (%)	Foreclosure Cost	Restructure Cost	Works Yes or No
1.	-15	2	7.65	$325,700	$200,415	yes
2.	0	2	7.65	235,700	200,415	yes
3.	+15	2	7.65	139,200	200,415	no
4.	-15	1.5	7.65	277,450	200,415	yes
5.	0	1.5	7.65	209,950	200,415	yes
6.	+15	1.5	7.65	142,450	200,415	no
7.	-15	1	7.65	229,200	200,415	yes
8.	0	1	7.65	184,200	200,415	no
9.	+15	1	7.65	139,200	200,415	no
10.	-15	2	9.5	325,700	225,752	yes
11.	0	2	9.5	235,700	225,752	yes
12.	+15	2	9.5	139,200	225,752	no
13.	-15	1.5	9.5	277,450	225,752	yes
14.	0	1.5	9.5	209,950	225,752	no
15.	+15	1.5	9.5	142,450	225,752	no
16.	-15	1	9.5	229,200	225,752	yes
17.	0	1	9.5	184,200	225,752	no
18.	+15	1	9.5	139,200	225,752	no
19.	-15	2	12.25	325,700	254,922	yes
20.	0	2	12.25	235,700	254,922	no
21.	+15	2	12.25	139,200	254,922	no
22.	-15	1.5	12.25	277,450	254,922	yes
23.	0	1.5	12.25	209,950	254,922	no
24.	+15	1.5	12.25	142,450	254,922	no
25.	-15	1	12.25	229,200	254,922	no
26.	0	1	12.25	184,200	254,922	no
27.	+15	1	12.25	139,200	254,922	no

Score: Restructure - 11: Foreclose - 16.

*7.65: Current cost of funds.
9.5 : First South PCA average interest charge last 12 months.
12.25: FLB of Jackson current interest charge.

Exhibit F - Pre-emptive Loan Restructuring.

JAMES W. BERRY
ATTORNEY AT LAW
P O DRAWER 900
205 SOUTH JULIA
RAYVILLE, LOUISIANA 71269-0900
318 728-4493

June 2, 1989

Mr. Floyd T. Neth
122 Windsor Court
Daphne, Alabama 36526

Dear Mr. Neth:

As per our conversation, I am pleased to enclose an example of the efforts of the Federal Land Bank of Jackson in Receivership to "restructure" loans under the Agricultural Credit Act of 1987. You will note a "Loan Restructure Agreement" which was prepared by the Receiver and signed by a representative of same. The borrower was contacted and requested to appear at the office of a local attorney for FLB to execute this document. They refused to do so without counsel.

After conferring with me, a current FLB appraisal was obtained. As you can note, the appraised value of the collateral was $67,500.00. The FLB proposed to "restructure" the loan at $93,366.48. The agreement required that the January 1, 1988, installment be paid and that FLB would reduce the interest rate to 10.75% for five years. An application for restructure with all supporting documents was forwarded to the borrower after we called their hand. In fact, I had re-prepared the restructure agreement to write down the restructured loan to $67,500.00.

I have no way of knowing how many of these were successfully completed by the Receiver. However, it appears to me to be a deliberate attempt to subvert the terms of the Act. I have taken pains to attempt to eliminate references to my clients' names and loan numbers. If you note any omissions, please correct same for me.

With kindest regards, I am

Yours sincerely,

Jim Berry

JAMES W. BERRY

STATE OF MISSISSIPPI FLBJ LOAN #:
COUNTY OF MADISON

* * *

STATE OF LOUISIANA
PARISH OF ____________________.

LOAN RESTRUCTURE AGREEMENT

BE IT KNOWN AND REMEMBERED, that on the dates hereinafter set forth, before the undersigned Notaries Public, duly qualified and commissioned in and for the respective jurisdictions aforesaid, and in the presence of the witnesses hereinafter undersigned,

PERSONALLY CAME AND APPEARED:

> THE FEDERAL LAND BANK OF JACKSON, IN RECEIVERSHIP, a corporation and federal instrumentality organized and existing under the laws of the United States of America, having its principal place of business at 1800 County Line Road, City of Ridgeland, County of Madison, State of Mississippi, herein appearing by and through REW ENTERPRISES, INC., RECEIVER, by and through Larry G. Koch, its President and Chief Executive Officer, duly authorized to appear herein, hereinafter referred to as "FLB",

WHO DECLARE unto me that on the day of , 1980, Borrowers did obligate themselves to all terms and conditions contained in that mortgage to Federal Land Bank of Jackson, then known as The Federal Land Bank of New Orleans, under loan number . in the original principal amount of $95,000.00; which loan was secured by a first mortgage on certain immovable property in West Carroll Parish, Louisiana, more specifically described in that Mortgage dated 1980, duly recorded in Mortgage Book , Page of the Mortgage records of West Carroll Parish, Louisiana, and further secured by a statutory lien on certain shares of Capital Stock/Participation Certificates in The Federal Land Bank Association of Jackson.

The aforesaid borrowers being delinquent in their obligation to FLB , and the borrowers having requested that FLB restructure their loan, Borrowers and FLB for cause and in consideration of the covenants herein contained, hereby covenant and agree:

1. Borrowers acknowledge that they are well and truly indebted to the FLB in the unmatured principal of $93,366.48 plus interest.

2. FLB will reamortize Borrowers' loan number upon the following terms:

   A. Borrowers will pay the January 1, 1988 installment plus default interest before the interest rate reduction is granted (paid 7/27/88).

   B. The interest rate on this loan will be reduced from 12.25% to 10.75% for five years beginning January 1, 1988.

   C. At the end of the five year period, the interest rate will revert back to the then current FLB variable rate of interest.

   D. The term of the loan will be unaltered by this agreement.

3. All persons liable on the loan shall provide annual financial and income statements to the bank by April 15 of each year.

4. In the event that any of the terms or conditions of this agreement are violated by Borrowers, the loan becomes delinquent without an agreed forebearance, or the security is transferred to another party, the loan will automatically return to the full variable rate plus any applicable interest. In addition, FLB retains all rights and remedies provided for in the note and mortgage.

5. Borrowers hereby acknowledge that they have freely entered into this agreement with FLB, and that they have no defenses which they could assert to this transaction, and further, that they have freely entered into all credit transactions with FLB, and have no defenses which could be asserted to any such transaction.

6. Borrowers acknowledge that they have been advised to seek the advice of legal and tax counsel in connection with this transaction and the execution of this instrument and aver that they have either obtained such counsel, or have knowingly chosen to not consult with an attorney and tax counsel.

7. Borrowers, their heirs, executors administrators and assigns hereby release and forever discharge FLB, its successors and assigns from any and all manner of action, cause of action, suits, debts, dues, sums of money accounts, covenants, contracts, agreements, promises, judgments and claims and demands of any kind whatsoever arising and from any and all transactions now or hereinbefore entered into with the said FLB.

8. It is further agreed that Borrowers will not institute, bring, or commence any action at law or in equity or in any civil proceeding in any court of the United States or any

state or territory thereof, or any foreign court, for injuries or damages that may have been, or may hereafter be sustained by him or her from the transaction with FLB including, but not limited to this Agreement of the herein referenced credit transactions, against the FLB or its agents or its employees.

9. The purpose of this agreement is to grant forebearance and temporarily reduce the interest rate as herein provided, for the cause and consideration herein recited. The note evidencing the indebtedness shall in all other respects be unaffected hereby and shall remain in full force and effect. Recourse is expressly reserved by the Bank against all parties not parties to this instrument who are or who may become liable in any capacity for the repayment of the indebtedness aforesaid. The parties hereto specifically agree that this Restructure Agreement does NOT create a novation.

10. This compromise of debt extends only to the indebtedness between the parties identified as loan number as above referenced and does not affect any other loans owed by Borrowers (or any of them) to FLB, if any.

11. Borrowers' stock in the Federal Land Bank Association of Jackson will remain in place and unaltered by this agreement.

This agreement constitutes the full and total agreement between the parties hereto as to the terms upon which the forebearance is granted. This Agreement is entered into for cause and in consideration of the covenants herein set forth.

THUS DONE AND SIGNED, in the City of Ridgeland, County of Madison, State of Mississippi, on the 24th day of September, 1988, before me Penny Raye Carpenter, Notary Public, in the presence of the undersigned competent witnesses of lawful age, who hereunto sign their names, with the undersigned Appearer and me, Notary, after due reading of the whole.

WITNESSES:

Shirley N. Brown

Robert D. Findley

THE FEDERAL LAND BANK OF JACKSON,
IN RECEIVERSHIP
BY REW ENTERPRISES, INC., RECEIVER

BY:
LARRY G. KOCH
President and Chief Executive Officer

Penny Raye Carpenter
NOTARY PUBLIC

My Commission Expires: 4/24/90

THUS DONE AND SIGNED in the City of ______________, Parish of ______________, State of Louisiana, on the ______ day of ______________, 19____, before me, ____________________________, Notary Public, in the presence of the undersigned competent witnesses of lawful age and domiciled in the State and Parish aforesaid, who hereunto sign their names, with the undersigned Appearers and me, Notary, after due reading of the whole.

WITNESSES:

__________________________ ____________________

__________________________ ____________________

____

NOTARY PUBLIC

AP-15

RESOLUTION

WHEREAS, REW Enterprises, Inc., was appointed Receiver of the Federal Land Bank of Jackson under Order of the Farm Credit Administration dated May 20, 1988; and

WHEREAS, the aforesaid Order was subsequently amended, in part, under Order of the Farm Credit Administration dated August 4, 1988, so as to authorize Larry G. Koch, President and Chief Executive Officer, to execute any and all documents on the behalf of the Receiver; and

WHEREAS, pursuant to the provisions of the Farm Credit Act of 1971, as amended, and regulations promulgated by the Farm Credit Administration in furtherance thereof, said Receiver has succeeded to and is vested with the authorities formerly exercised by the Board of Directors of the Federal Land Bank of Jackson; and

WHEREAS, in order to properly discharge its responsibilities with regard to the assets of the Federal Land Bank of Jackson In Receivership, it is necessary that said Receiver appear and act by and through the aforesaid corporate officer in the execution of documents for and on behalf of the Receivership;

THEREFORE, BE IT RESOLVED, that Larry G. Koch, President and Chief Executive Officer of REW Enterprises, Inc., Receiver, be and hereby is authorized and empowered to execute all Statutory and Special Warranty Deeds, Quit Claim Deeds, Acts of Cash Sale, Acts of Credit Sale and Mortgage, Bills of Sale, Contracts of Sale, Releases, Partial Releases, Cancellations and Acts of Cancellation, Assignments of Notes and Mortgages, Leases, Subordinations and Grants of Easements and Servitudes for and on behalf of the Federal Land Bank of Jackson In Receivership, acting by and through the Receiver, and to further do and take all actions and to execute all other instruments necessary to properly effectuate the purposes of this Resolution.

CERTIFICATION

I, JOSEPH F. LOLLMAN, DULY APPOINTED CORPORATE SECRETARY, DO HEREBY CERTIFY THAT THE ABOVE IS A TRUE AND CORRECT EXCERPT FROM THE MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS HELD ON THE 9TH DAY OF AUGUST, 1988.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED THE SEAL OF THE CORPORATION ON THIS THE ______ DAY OF ________________, 1988.

JOSEPH F. LOLLMAN
CORPORATE SECRETARY

FARM APPRAISAL REPORT

OFFICE LOCATION Rayville, LA. CODE 34300

APPLICANT ______ LOAN NUMBER ______

2 TYPE [✓ F] B STATE LA CODE 22 COUNTY/PARISH West Carroll CODE 123

3 SECTION NO. ______ TOWNSHIP ______ RANGE ______

SIGNIFICANT NON FARM INFLUENCE ON VALUES:
[✓ 0 - NONE] 1 - COMMERCIAL 2 - RESIDENTIAL 3 - MILITARY 4 - INTERSTATE 5 - OTHER HIGHWAY 6 - RECREATIONAL 7 - OTHER 8 - COMBINATION 9 - MINERAL

4 DEGREE OF NON FARM INFLUENCE [✓ 0 - NONE] 1 - SLIGHT 2 - MODERATE 3 - HEAVY

CLASS OF AREA 3 FARM C

NON FEE INTEREST IN REAL ESTATE [✓ 0 - NONE] 3 - NAT. FOREST 4 - STATE 5 - PRIVATE LAND LEASE 7 - OTHER 8 - COMBINATION

5. ACRES LEASED: NEAREST ACRE 0 SECURITY TYPE: 21 - PART-TIME 22 - HEADQUARTERS 23 - RENTAL TRACT 25 - FACILITY 26 - GENERAL FARM 35 - DAIRY 37 - POULTRY 38 - RANCH CATTLE 43 - TIMBER 26

REMAINING TERM X YEARS (X IF NOT APPLICABLE)

6 FARM PRODUCTS PRODUCED ON SECURITY: PRIMARY Cotton (name) 121 (code) SECONDARY Soybeans (name) 154 (code)

7 LIVESTOCK OR POULTRY FACILITY CAPACITY X TOTAL LIVESTOCK CARRYING CAPACITY OF SECURITY (HEAD FALL COUNT) X

8 PRINCIPAL DWELLING: YEAR BUILT X VALUE $ 0 TOTAL BUILDING VALUE $ 0

9 VALUE OF MERCHANTABLE TIMBER AND PULPWOOD $ 0

10 ACREAGE DEVOTED TO:
TIMBER 0 WOODLAND 7 PASTURE 6 CULTIVATION 143
IRRIGATION 0 ROADS & DITCHES 5 WASTE 0 TOTAL ACREAGE 161

DESCRIPTION OF LAND: (For separate tracts, use separate valuation sheet.)

SYMBOL ON PLAT	PRESENT USE	ACRES	TYPE, QUALITY, TOPOGRAPHY, EASE OF CULTIVATION, ETC. OF SOIL
	TR 1	81	} See Separate Valuation sheets
	TR 2	40	
	TR 3	40	

DESCRIPTION OF BUILDINGS (present cost of replacement less depreciation):

KIND INSURABLE	PLAT NO	NO BR & BATHS	LIVING AREA	CARPORT/ GARAGE	UTILITY/ STORAGE	PORCHES	MATERIAL	ROOF	CONDITION	REPLACEMENT COST	CONTRIBUTORY VALUE
N/A											

TOTAL BUILDING VALUE 0

VALUES: (All Tracts)

	"As Is"	"As Will Be"
Market Value By Income Approach	$ X	$ X
Market Value By Cost Approach	$ X	$ X
Market Value By Sales Approach	$ 67,500	$ X
MARKET VALUE:	$ 67,500	$ X

I certify that I have inspected the real estate described herein and that this report is true and correct to the best of my knowledge. The three approaches to value have been considered in arriving at the estimated values.

Appraised: Month 11 Day 11 Year 19 87 Appraiser: J. B. Owens Code 147

Exhibit G - Constants for Computing Cost of Foreclosure.

Notes to Schedule A-3. Difference Between Cost of Foreclosure and Cost of Restructuring.

Note (1) Average Number of Days Between the Date of Initiation of Foreclosure and the Date of Disposition of the Foreclosed Property.

The value to use for the average number of days between the date of initiation of an action to foreclose and the date of disposition of the foreclosed collateral can best be estimated by dividing time into three parts, estimating the time for each part, and combining to reach the total. The three parts are (I) the time between the date of initiation of foreclosure and the date of the foreclosure deed, (II) the time between the date of the foreclosure deed and the date of the conveyance of the foreclosed property on resale before the Agricultural Credit Act of 1987, and (III) the time added to (I) and (II) by the application of the provisions of the Act.

(I) Days Between Initiation of Foreclosure Proceedings and Completion of Foreclosure.

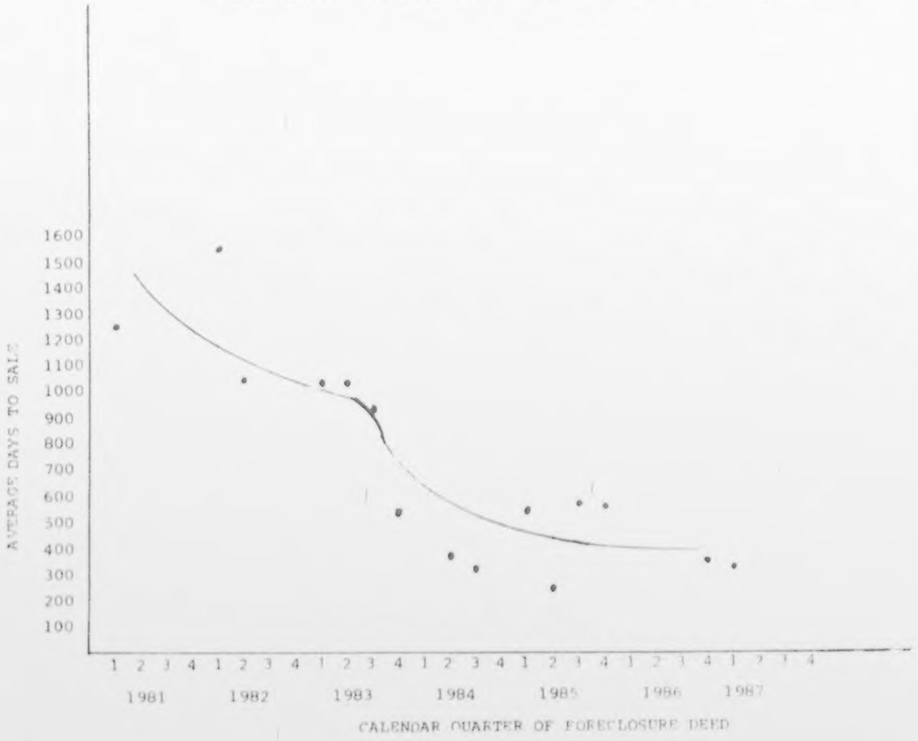
Foreclosure proceedings were initiated by PCA against Borrower on 11/16/1987 when a letter was sent to Borrower by PCA advising that collection proceedings (foreclosure) would be initiated 18 days thereafter, 12/4/87. It is Borrower's opinion that the correct date of initiation of proceedings was when the loan was declared in default by letter dated 11/15/87 and demanding payment of the full amount of the indebtedness, since no additional payments can be reasonably expected after such action. Had the foreclosure proceedings not been discontinued by PCA after objection of Borrower on the basis of the Act, the foreclosure would have been completed 4/3/88. The total elapsed time would have been 140 days, without any time for preparing and filing the foreclosure deed. Baldwin County Records show this to be 2 or 3 days - total elapsed time 142± days.

Federal Land Bank foreclosed Borrower's property in Baldwin County, Alabama. Initiation of foreclosure, if assumed to begin the date the loan payments were accelerated, was on 8/4/87. The foreclosure sale was 12/3/87 - elapsed time - 121 days. Allow 2 days to prepare and file foreclosure deed and elapsed time is 123 days. The average of the two foreclosures is 131 days.

(III) Average Number of Days Between Date of Foreclosure and Date of Sale of Foreclosed Property.

Reference is made to Figure A-1, Graph of Number of Days From Date of Foreclosure Deed to Dates of Resale Deeds of Conveyance vs. Time of Foreclosure by Calendar Quarters.

SALE OF FORECLOSED PROPERY BY CALENDAR QUARTER FOR PERIOD 1981 - 1987.
(Data Source - Probate Court Records of Baldwin County, Alabama)



The data used to prepare this graph include all foreclosures and sales of the foreclosed properties from 1978 through 1987 by Federal Land Bank recorded in the Probate Court Record for Baldwin County, Alabama. Since there are no records of foreclosure between 1978 and 1981, the records were not searched farther back than 1978. The data show a total of 40 foreclosures, not including 10 foreclosures completed in 1987 and 1988, for which few resales had been made, and 82 separate sales of the 40 foreclosed properties. There were more sales than foreclosures because many of the foreclosed properties were divided and sold in smaller parcels. The graph shows that for the first eleven quarters, beginning with the first quarter of 1981 and ending with the third quarter of 1983, the average time between foreclosure and sale varied around a mean of about 1,100 days. A significant drop occurred about the fourth quarter of 1983, after which the data scatter more or less randomly around an average quarterly mean of about 450 days. There is little evidence that a statistically valid reduction in time occurred after 1983.

On the basis of these observations foreclosures completed before the fourth quarter of 1983 have been dropped in estimating the value to be used for the current number of days between foreclosure and sale, a value that is smaller than that which would have been obtained by averaging all the data. The average of days from foreclosure to sale is computed by adding the number of days from foreclosure to sale for each sale and dividing the result by the number of sales. The average of 78 sales is 634 days. (This number differs from the 450 days estimated from the graph. That number is the mean of the average of the sales occurring in each quarter, the number of which varies from 1 to 14, whereas the correct number, 634, is the average of all sales for the total period, fourth quarter 1983 through first quarter 1987.)

(III) Affect of Agricultural Credit Act of 1987 on Time Between Initiation of Action to Foreclose and Disposition of Foreclosed Property.

The following new procedures are added to those required before the Act in order to complete the disposition of collateral after the decision has been made to foreclose and sell. These procedures with estimated time requirements are as follows.

Procedure	Days
(A) After Application for Loan Restructuring, Time for PCA to Deny Restructuring.	7
(B) Time for Borrower to Apply for Review of Denial.	10
(C) Independent Appraisal if Additional Collateral is Required by PCA.	30
(D) Time to Schedule Meeting with Review Committee.	14
(E) Notification of Action by Review Committee.	7
(F) Review of Denial by Special Asset Group.	14
(G) Time to Get Accredited Appraisal for First Right of Refusal Notice.	30
(H) Time for Former Owner to Reply.	33
(I) Time for PCA to Consider and Reject Counter Offer	15
Total Time Added By Act	160 days

(IV) Summary - Total Time to be Used for Computations to Determine Cost of Foreclosure

(I) Days from Initiation to Completion of Foreclosure.	131
(II) Days from Date of Foreclosure to Date of Disposition Before Act.	634
(III) Days Added by Act.	160
Total	925

Borrower has arbitrarily reduced the estimated number by 100 days for his computations to allow for any bias as a result of his potential conflict of interest. Thus the figure used in Borrower's computations is 825 days.

Note (2) 1987 property taxes are prorated on the basis of the number of days determined by Not (1).

Note (3) Coyote Ridge Landowners' Association of which owner

Exhibit H.

FmHA Instruction 1951-S
Exhibit J of Subpart S
Page 20

VII Net Recovery Value

DALR$ computes the net recovery value of collateral to obtain a value to use for the net recovery value test outlined in section VI C3b of this exhibit, as required in §1951.909(f) of this subpart. See Exhibit I, "Guidelines for Determining Adjustments for Net Recovery Value of Collateral," for guidance in determining the value of specific items in the net recovery value calculations outlined have.

Net recovery value is computed for all FmHA Farmer Program loan security. If FmHA's lien position or the amount of prior liens vary from item to item, separate net recovery values will be computed for each item which has a different lien structure. Example: FmHA has a first lien on a borrower's equipment, except for two tractors. One tractor was financed by non-FmHA credit, and FmHA has a junior lien subject to the purchase money financing. In the case of the second tractor, FmHA subordinated its lien to another lender to finance repairs, thus, FmHA has a junior lien subject to the amount subordinated. In this example there would be three net recovery calculations, one for each tractor and one for the remaining equipment. The sum of the three calculations would be the net recovery value. The same logic applies to real estate security. Thus, the sum of all individual calculations will be the total net recovery value.

The general formula for net recovery value is as follows:

market value of security
minus prior liens
minus property taxes while in inventory
minus depreciation on property
minus management charges
minus repairs necessary for resale
minus legal and administrative fees
minus sales costs
minus advertising cost
plus/minus increase/decrease in value while in inventory
minus interest cost while in inventory
minus miscellaneous expenses, if any
plus anticipated income while in inventory
equals net recovery value for security property

total of net recovery value for individual property items = net recovery value of collateral

The individual items in the net recovery value formula are computed as follows:

1. Market value of security - the market value of the security based upon a current appraisal.
2. Prior liens - the total of all liens proceeding FmHA's security interest, including past due taxes and assessments and subordinations.

3. Property taxes and assessments while in inventory - (annual tax and assessments due divided by 12) x average holding period in months.

4. Depreciation on property - Annual amount of depreciation determined by the County Supervisor, divided by 12 x average holding period in months.

5. Management charges - based upon methods of management used, (acres under management x annual rate per acre) divided by 12 x average holding period in months, or (net income on a monthly basis x percentage fee charged) x average holding period in months, or the anticipated monthly management and maintenance expense x average holding period in months, or the total of the appropriate combination of these.

6. Repairs - as determined necessary by County Supervisor.

7. Legal fees - determined with guidance from the State Director.
8. Sales costs - commission rate x market value of security.

9. Advertising - cost of three-week advertisement 1 time x (average holding period in months divided by 6, rounded to the nearest whole number).

10. Value increase/decrease - annual percentage divided by 12 x average holding period in months x market value.

11. Interest cost during inventory period - (interest rate on 90-day T-Bills x current market value) divided by 12 x average holding period, in months.

12. Average holding period for inventory, in months - determined by the State Director in accordance with FmHA Instructions.

13. Miscellaneous - any unusual or other expenses associated with acquiring, holding, or selling the property which are not covered by itemized expense items, such as hazardous waste cleanup and surveys.

14. Income - income received every month x average holding period in months + (total of non-monthly income received for the year divided by 12) x average holding period in months.

VIII. Summary

At this point, DALR$ has finished its calculations. DALR$ will consider service programs to the point where a feasible plan has been achieved, or all farmer program loans have been written down completely. DALR$ will provide a report of the results of the calculations performed, including the present value test.

If DALR$ does not find a solution that will provide a a feasible plan, FmHA will proceed with the other actions authorized in this subpart, including mediation, offer the opportunity to purchase collateral for net recovery value, and consideration for Preservation Service Programs.

Attachment: Attachment 1

T OF CREDIT SALE AND MORTGAGE
THE FEDERAL LAND BANK
JACKSON

Exhibit I.

UNITED STATES OF AMERICA
STATE OF LOUISIANA
PARISH OF ____________________

____
____

BE IT KNOWN AND REMEMBERED, that on this _____ day of _______________, in the year of our Lord one thousand ne hundred ____________________.

BEFORE ME, _________________________, a Notary Public, duly commissioned and qualified, in and for the rish of ____________________, State of Louisiana, and in the presence of the witnesses hereinafter named and dersigned:

PERSONALLY CAME AND APPEARED:

THE FEDERAL LAND BANK OF JACKSON, a corporation and federal instrumentality organized and existing under the laws of the United States of America, having its principal place of business at 1800 East County Line Road, in the Town of Ridgeland, County of Madison, State of Mississippi 39157, herein appearing by and through ______________________________, its ______________________________, pursuant to a resolution authorizing the herein described conveyance, a copy of said resolution being attached hereto and made a part hereof,

reinafter called VENDOR, who declares that the said Vendor does by these presents, grant, bargain, sell, convey, ansfer, assign, set over, abandon and deliver with reservation of all legal warranties but with full substitution and brogation in and to all the rights and actions of warranty which the Vendor has or may have against all preceding ners and vendors, provided, however, (1) that vendor warrants that it has not caused or allowed any lien, defect or her encumbrance to be placed upon said property during vendor's ownership of title, unless specifically set forth rein, and vendor grants no warranty, expressed or implied against eviction, even as to return of purchase price; and) With regard to the condition or defects visible or invisible, in and to any and all buildings or improvements nveyed herein, all such buildings and/or improvements being conveyed on an "as is" basis and vendor makes no guaranty, rranty or representations expressed or implied as to the condition of the property, even as to the warranty of bitability or as to return of purchase price; this being made unto:

ereinafter called Vendee, whether one or more, here present, accepting and purchasing for Vendee, Vendee's heirs, ccessors and assigns and acknowledging delivery and possession of the following described property in the Parish of ______________________________, State of Louisiana, to-wit:

See Exhibit "A" attached hereto and made a part hereof as if copied herein in estensio.

SUBJECT TO THE FOLLOWING:

1. Existing rights-of-way, servitudes, leases, parties in possession, easements, restrictive covenants, taxes and assessments not yet due and payable, building and zoning restrictions and regulations adopted by any governmental rules, regulations and/or ordinances (including, but not limited to building and zoning restrictions) having jurisdiction over the property;
2. Conditions, reservations, restrictions, liens and encumbrances of record. Vendor does hereby convey only such interest, if any, in and to all oil, gas, coal, lignite and other minerals in, on and under the above described property as may have been acquired by Vendor in the most recent transfer of said property. It is further understood and agreed that such minerals as are being conveyed to Vendee, if any, are conveyed without warranty of any kind;
3. Any discrepancies, conflicts, encroachments, shortages in area, acreage and boundaries or other facts which would be shown by a current survey;
4. Party wall rights, boundary fence agreements, or party sidewalks or driveways;
5. All matters arising out of or in connection with the acts of the Vendee or those claiming under or through the purchaser; and,
6. All statutory rights of redemption.

TO HAVE AND TO HOLD the above-described property unto the Vendee, his heirs and assigns forever.

This sale is made for and in consideration of the price and sum of ______________________________ ______________________________ ($______________) Dollars,

in part payment and deduction whereof, the Vendee has well and truly paid in money the sum of ______________ ______________________________ ($______________) Dollars,

receipt of which is hereby acknowledged by the Vendor, and for the balance of said purchase price, to-wit, the sum of ______________________________ ($______________)

Dollars, the Vendee has furnished one certain promissory note in said sum, payable to the order of Vendor, currently bearing interest at ________ percent (______%) per annum as described in said note, said note providing that the interest rate may change from time to time, the final installment being due and payable on the ____ day of ______________________, said note being of even date herewith and, after having been paraphed "Ne Varietur" by me, Notary, for identification herewith, was delivered to the Vendor herein, who hereby acknowledges receipt thereof.

And now therefore, in order to secure the payment of said note at maturity, together with interest, attorney's fees, premiums of insurance and costs, and other advances, all as hereinafter stated, a VENDOR'S LIEN AND PRIVILEGE AND SPECIAL MORTGAGE are hereby granted, affected and hypothecated by the said Vendee on the property herein conveyed, and are hereby granted in favor of and retained by the Vendor and any future holder or holders of said note, upon the above described property together with all buildings, component parts, incorporeal immovables, immovables by declaration, and other improvements, and all batture, relictions, derelictions, strips and gores, rights, ways, privileges and appurtenances, servitudes, hereditaments, and advantages thereunto belonging, or in any wise appertaining, now owned or existing on property or hereafter acquired, in any manner, by Vendee, together with the rents, issues, and profits thereof and revenues and income therefrom. Also, together with all crop allotments of every kind, character and nature, presently allotted and/or assigned to, or hereafter allotted and/or assigned to, Vendee and/or the property above described. The said property to remain so specially mortgaged, affected and hypothecated unto and in favor of Vendor and any future holder or holders of said note until the fulfillment of all of the terms, provisions, and covenants of his instrument, and until the full payment of any and all debts and obligations, Vendee hereby being bound not to sell, lienate or encumber said property to the prejudice of this instrument, this provision constituting a pact de non lienando.

Further, for the above stated cause and considerations, Vendee pledges all rights and interests in any and all eases, rents, options, contracts, agreements, and other benefits which Vendee presently holds and/or hereafter acquires n the above described property, including, but not limited to, mineral, agricultural, governmental, quasi-governmental, nd utility leases, to the Federal Land Bank of Jackson in order to secure the debts and/or obligations stated herein; herefore, Vendee will commence paying to Vendor, within fifteen (15) days of written notice of demand by Vendor, all ayments, rents, royalties, bonuses, delay rentals, shut-in-payments, and any other monies that may from time to time ecome due and payable to Vendee under any oil, gas, other mineral and/or agricultural lease and/or any other type of nstrument or agreement, now existing, or hereafter coming into existence, covering the above described property or any ortion thereof, for application on the above stated debts and/or obligations according to the terms, provisions, and ovenants of the promissory note(s), this instrument, and all instruments related hereto.

For the purpose of further securing the above referred indebtedness, Vendee further warrants, covenants, epresents, and agrees as follows:

1. Vendee agrees and warrants that this instrument is a valid first lien against all the property and improvements offered and appraised as security for any and all debts and/or obligations secured hereby; that Vendee is the owner(s) of and lawfully seized in fee and possessed of the above described property affected hereby and has a good and lawful right to mortgage same; that said property is now free from any and all other liens and encumbrances. Vendor will not defend the title thereto against any claims or demands of any parties; therefore, if the validity of this instrument, or if the Vendee's title to any of said property or improvements is questioned in any manner, or if any part of such property or improvements is not properly described herein, or if any terms contained in this instrument and/or any instruments related hereto including, as shall so be interpreted throughout this instrument, shall be determined to be incomplete or incorrect, Vendee agrees to fully cooperate with Vendor and execute any corrective instrument(s) as required by Vendor;

2. Vendee shall separately assess said property for taxation and shall completely satisfy when due all taxes, liens, judgments, or assessments recorded, imposed, or assessed against said property and, if required by Vendor, promptly furnish Vendor with evidence of such complete satisfaction;

3. Vendee shall insure and keep insured the property hereinabove described, including, but not limited to, buildings, fixtures and improvements now on, or which may hereafter be placed upon any of herein described property, against loss or damage by fire (including extended coverage), theft, wind and such other hazards, casualties and contingencies (including flood and waste damage) in such manner, in such amounts and with such companies as may be satisfactory to Vendor, which insurance shall be maintained for the benefit of Vendor with a standard mortgage clause, with loss, if any, payable to the Vendor as its interests may appear, which insurance to be in an amount at least equal to the full insurable value of the property hereinabove described and all buildings, fixtures and improvements thereon; Vendee shall give immediate notice in writing to Vendor of any loss or damage to said property from any cause whatsoever and the proceeds of such insurance shall be paid by the insurer to Vendor, which is hereby granted full power to settle and compromise claims under all policies, to endorse in the name of Vendee any check or draft representing the proceeds of any such insurance, and to demand, receive and give receipt in the name of Vendee for all sums coming due thereunder; which insurance proceeds may, at the election of the Vendor and subject to general regulations of the Farm Credit Administration, be credited on the debts and/or obligations secured by this instrument on the date of actual receipt by Vendor, less costs of collection and other expenses, or may be used, in whole or in part, to repair or reconstruct said property and proceeds used for repair or reconstruction shall not act to reduce the debt and/or obligations;

4. Vendee shall, at the option of Vendor and subject to general regulations of the Farm Credit Administration, obtain and carry credit life insurance (mortgage protection insurance) on the life of Vendee, and/rr to assign the benefits (both cash value and/or death benefits) of any existing insurance on the life of the Vendee in favor of Vendor; when so required by Vendor, any policy evidencing such insurance shall be deposited with, and any loss thereunder shall be payable to, Vendor as its interest may appear, if Vendee fails to obtain said insurance as may be required, then, at the election of the Vendor and without notice to any person, the Vendor may, but shall not be obligated to, obtain and carry said insurance for Vendee in compliance hereof;

5. Vendee shall properly care for and keep in good repair said property and improvements hereinabove described and shall not commit or permit waste, impairments, removal, damage or deterioration of the same; and, if a farm, Vendee shall cultivate said property in an appropriate and reasonable manner and maintain and continue said farming operations; to comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the property, and permit Vendor, or any person acting on its behalf to enter and inspect the property hereinabove described and the buildings, improvements, and timber thereon or affected hereby, at such times as Vendor desires; Vendee agrees, as to the property herein described and the timber thereon or affected hereby, to follow a good and approved forestry practice that will minimize fire risks, avoid depreciation, protect young timber, and maintain forest production; it being intended and agreed, however, that no timber now or hereafter affected hereby will be cut, removed, damaged or turpentined (except such as is customarily used on the property for fuel, fencing and repairs) without the prior written consent of Vendor, and then only upon compliance with such terms and conditions as shall be established by Vendor;

6. Vendee agrees that this instrument is given and accepted upon the express provision that, except where same is accomplished by inheritance by Vendee's heirs, the property hereinabove described, or any part thereof, or any interest therein, shall not be further mortgaged, sold, agreed to be sold, conveyed, alienated, rented, leased, or optioned, whether voluntarily, involuntarily or by operation of law or by transfer through the enforcement of a subordinate lien or mortgage or otherwise, without the prior written consent of the Vendor, in each and every instance; subsequent acceptance of any payment hereunder by Vendor shall not be deemed a waiver of this covenant, regardless of Vendor's knowledge of such mortgage, sale, agreement to sell, conveyance, alienation, rent, lease, or option at the time of acceptance of such payment; if all or any part of the property hereinabove described becomes vested in any party other than Vendee, Vendor may, without notice to Vendee, deal with such successor in interest with reference to this instrument and the debt hereby secured, in the same manner as with the Vendee, without in any way releasing, vitiating or discharging the Vendee's liability hereunder or for the debts and obligations hereby secured, and extension(s) of time for payment or other loan treatments described herein given or permitted by Vendor shall not operate to release, vitiate, or discharge the liability of the Vendee herein, either in whole or in part;

7. Vendee agrees and warrants that any and all representations and/or statements made in connection with any loans, debts, or other obligations secured hereby and with any and all renewals, indulgences, extensions, restructuring, reamortizations, and any other loan treatments, and any releases of personal liability and/or of security granted or permitted by the Vendor are true and correct, and any loan proceeds or other advances made to or on behalf of Vendee will be used solely for the purposes specified in the loan application and/or commitment, and that Vendee will continuously comply with any and all requirements and/or conditions imposed by said Vendor, including, but not limited to, the execution and delivery of any security instrument(s), mortgage(s), note(s), or other writings and documents required by Vendor now or in the future to create, preserve, protect and/or enforce Vendor's rights and/or interests;

8. Vendee agrees that any failure of vendee to perform or any transfer or attempt to transfer any allotments, quotas, payments, or other benefits or any portions thereof, pursuant to applicable government rules, shall not be made without the written consent of the Vendor; in the event of the foreclosure or other enforcement of this instrument, the Vendee agrees to perform all acts necessary, if any, to vest the Vendor, its successor(s), or any of the purchaser(s) of any of the property hereinabove described, as the case may be, with all of the Vendee's right, title and interest in the allotments, quotas, and/or benefits required to be maintained hereunder;

9. Vendee agrees that any and all judgments, payments, awards and/or settlements for or related to damages, use, depredation, condemnation, eminent domain, taking, and/or injury to or decrease in value of the property herein described, or any part thereof, by any entity or cause, including, but not limited to, any private, public or quasi-public authority or corporation, shall be security hereunder and, at Vendor's option, be due and payble to Vendor to be retained and applied, wholly or in part, toward payment of any debts and/or obligations secured by this instrument owed said Vendor by Vendee, or be paid over wholly or in part to the Vendee, who assumes full and sole responsibility to apply said funds, for the purpose of altering, repairing, and/or reconstructing any part of the premises which may have been altered, removed, damaged or destroyed as a result of any such taking or other injury to the premises, or for any other purpose or object approved in writing by the Vendor; if prior to the receipt by the Vendor of such award or payment the premises have been sold by foreclosure of this instrument, the Vendor shall have the right to receive said award or payment to the extent of any deficiency found to be due upon such sale and/or any other debts and/or obligations secured by this instrument, with interest thereon, at the rate herein described;

10. Vendee agrees that, if default shall be made in the payment of any of the debts and/or obligations hereby secured or in the performance of any of the terms, provisions or covenants of this instrument, Vendor may proceed to collect the rent, income, and profits from the herein described property and all rights and interest therein, and Vendor may notify the lessees or other payors thereof to make payment directly to Vendor;

11. Vendee agrees this instrument and the debts and/or obligations secured hereby or in any way connected herewith are subject to the Farm Credit Act of 1971 and all acts amendatory or supplementary thereto, and the laws of the State of Louisiana not inconsistent therewith;

12. Vendee warrants that Vendee's hereinafter referenced address is true and correct and that Vendee shall keep Vendor informed at all times of their correct residence address and correct mailing address, and any changes thereto;

13. Vendee agrees that Vendor may at any time, without notice, (1) release all or any part of the property described herein, (2) grant future advance(s), readvance(s), renewals, extensions, restructurings, reamortizations, any other loan treatments and/or deferments of the debts and/or obligations secured hereby, or any part thereof, or of time of payment thereof, (3) release from liability any one or more parties who are or may become liable for the payment of all or any part of said debts and/or obligations, and/or (4) grant any other loan treatment as said Vendor deems appropriate, without affecting the priority of this instrument and without operating to release, discharge, modify, change or affect the liability of the Vendee or any other party liable or who may become liable for the said debts and/or obligations;

14. Vendee agrees that all the terms, provisions, and covenants of Vendee herein contained shall extend to and bind his respective heirs, executors, administrators, personal representatives, receivers, successors and assigns, and that the terms, provisions and covenants and all options, rights, privileges and powers herein given, granted or secured to Vendor shall inure to the benefit of its successors and assigns;

15. Vendee agrees that Vendor is hereby authorized to notify any lessee of the property and/or any rights therein of the existence of this instrument and any other assignment, pledge or instrument, but is not required to do so, any and all sums, relating thereto, received by the Mortgagee shall be applied first, to the payment of debt and/or other obligations secured hereby and/or to the reimbursement of the Vendor for any sums advanced in payment of taxes, insurance premiums, assessments, or for other purposes as provided herein, together with the interest due thereon; or said Vendor may, at its option, turn over and deliver to Vendee, or any other party entitled thereto, either in whole or in part, any or all of such sums, without prejudice to Vendor's rights to take and retain any future sum, or sums, and without prejudice to any of Vendor's other rights under this instrument;

16. Vendee agrees that Vendor may, at Vendor's option, appoint a keeper, as provided under Louisiana law;

17. Vendee shall pay and discharge, when the same become due, any and all debts, obligations, indebtedness(es), future advances, additional advances, and/or readvances, and/or any renewals, extensions, restructurings, reamortizations and/or any other loan treatment(s) thereof, secured hereby and/or any other instruments related hereto, or any part thereof, and the interest thereon;

→ 18. Vendee agrees that in the event Vendor, in good faith, deems itself insecure and/or deems the prospect of payment or performance hereunder impaired, Vendee shall, at the option of Vendor, pay the whole of the debts, obligations, and indebtednesses secured hereby with interest hereon or provide Vendor with sufficient and satisfactory collateral and/or additional collateral;

19. Vendee agrees that Vendor, at Vendor's option and without any obligation to do so, (1) may employ attorneys, experts, arbitrators, investigators, keepers, appraisers and surveyors and/or (2) may incur costs, expenses and fees and/or (3) may appear in any suit, administrative, arbitrative or regulatory hearing and litigate any matters, including but not limited to eminent domain proceedings, bankruptcy proceedings, partition suits or any other legal proceedings, whether a party plaintiff, defendant, intervenor or otherwise, affecting property described herein, this instrument, any instruments relating hereto, and/or the interests, rights, or obligations of the Vendee and/or Vendor associated herewith, in order to maintain, enforce and ensure compliance with any and all provisions of this instrument and/or any instruments relating hereto and/or in order to preserve, protect and maintain the herein described property and/or the rights or interests of the Vendor and/or in order to collect or attempt to collect the debts and/or obligations associated herewith or relating hereto;

20. Vendee agrees to immediately pay and satisfy, when incurred by either Vendee or Vendor, any and all costs, expenses, and fees expended in order to maintain, enforce, and ensure compliance with any and all provisions of this instrument and/or any instruments relating hereto, including but not limited to costs, expenses and fees for taxes, insurance, attorneys, experts, arbitrators, investigators, witnesses, appraisers, surveyors, keepers, recordation, repairs, assessments, liens, judgments or encumbrances;

21. Vendee agrees that if Vendee fails to pay any costs, expenses or fees, whether incurred by Vendee or Vendor, pursuant to the terms and provisions of this instrument and/or any instruments relating hereto, Vendor may, at its option and without any obligation to do so, make, pay or advance such fees, costs and/or expenses and upon such payment or advances by Vendor, the amounts thereof, together with interest thereon at the rate in effect as set forth in the promissory note(s) secured hereby, shall be immediately due and payable by Vendee and secured hereby;

22. Vendee agrees that in the event that any payment(s) of principal, interest, costs, expenses, fees and/or other charges under the terms and provisions of this instrument and/or any instruments related hereto are not paid when due, such past due payment(s) shall bear interest from the due date until paid at the rate in effect during the period of said non-payment as set forth in the promissory note(s) secured hereby plus an additional four (4%) per cent per annum;

23. Vendee agrees that any delay, forebearance or failure of Vendor in exercising any right, remedy or option hereunder or otherwise afforded by applicable law shall not be a waiver of or preclude the enforcement of any right, remedy or option as to past, present, or future non-compliance or non-performance hereunder; and the payment of costs, expenses, fees and/or other charges hereunder by Vendor or the acceptance of any payments shall not be a waiver of Vendor's right to accelerate the maturity of the debts and/or other obligations secured by this instrument and instruments related hereto and shall not be a waiver of Vendor's right of foreclosure;

24. Vendor agrees that if Vendee fails to pay when due any sum hereby secured or fails to perform any of the terms, provisions, and covenants herein contained, or should Vendee fail to pay when due any other debt and/or obligation owed the Federal Land Bank of Jackson or to perform any term, provision, and/or covenant under any instrument(s) related thereto, or should Vendee become insolvent or, as a debtor, become involved in proceedings under the Federal Bankruptcy Code, the whole indebtedness secured hereby may, at the option of Vendor, be declared due and payable, and Vendor may cause the property herein mortgaued to be seized and sold by executory or any other legal process, without appraisement the benefit of which is hereby waived, to the highest bidder for cash or on terms, the said Vendee hereby confessing judgment for the full amount of said note in principal, interest and attorneys' fees and all other debts and obligations and the interest thereon that are secured hereby, and waiving the three days' notice provided by Article 2639 of the Louisiana Code of Civil Procedure and the three days' delay provided by Article 2331 of said Code;

25. Vendee agrees that Vendee waives any and all homestead and personal exemptions to which Vendee is or may be entitled under the Constitution and laws of the State of Louisiana and/or United States of America;

26. Vendee agrees that payments required hereunder and/or under any promissory notes and instruments related hereto shall be deemed made when actually received by Vendor; further, that each and every term, provision, and covenant contained in this instrument and any other instruments related hereto is declared by the parties hereto to be separate, distinct, and severable; according, if any such term, condition, or provision is declared null, void or unenforceable by a Court of competent jurisdiction, for any reason, all other terms, conditions, and provisions shall not be affected thereby and shall remain in full force and effect between the parties hereto, their successors, heirs, legal representatives and assigns; and, also, as applicable, each plural noun, pronoun, and verb may be read as singular and each singular noun, pronoun, and verb may be read as plural; and gender may be read as masculine, feminine, or neuter.

Parties hereto do hereby dispense with the certificate of mortgages required by Article 3364 of the Louisiana Civil Code and agree to hold me, Notary, harmless for non-production of same.

THUS DONE AND PASSED, in the City of ____________________, Parish of ____________________, State of Louisiana, in my office on the day, month and year herein first above written, in the presence of ______________________________ and ______________________________, competent witnesses, of lawful age and domicile in the State and Parish aforesaid, who hereunto sign their names with the said appearers and me, Notary, after reading of the whole.

____
Witness:

____
Witness:

FEDERAL LAND BANK OF JACKSON
VENDOR,

BY: ______________________________
Its

____
Vendee

____
Vendee

____
Notary Public

PREPARED STATEMENT OF JO ANN FORSNESS, NATIONAL FARM CREDIT CHAIRMAN FOR WOMEN INVOLVED IN FARM ECONOMICS (WIFE), WOLF POINT, MT

Senator Kent Conrad, members of the Senate Agriculture Committee's Subcommittee on Agricultural Credit, WIFE thanks you for the opportunity to testify here today. The subject of this hearing, "Agricultural Credit" is vital to all producers.

I have lived on a diversified farm/ranch for 35 years with my husband Dewey. Our home is located near Wolf Point in eastern Montana. Grandparents of both my husband and myself came to eastern Montana to homestead in 1910 and 1918, survived the depression of the 1930's and these farms remain in the families at this time. My grandmother, a charter member of Wolf Point PCA was the only woman to sit on the board of that entity.

WIFE is an independent farm organization of women dedicated to the purpose of promoting economic prosperity for family agricultural producers and preserving the family farm concept for the production of the Nation's food and fibre. We are concerned about the deplorable economic conditions that exist for this Nation's producers.

Contrary to the Farm Credit System's information and statistics, there are still enormous problems to be faced by the farm and ranch borrowers of this Nation. We sincerely believe that you know this, however the nonfarm public is a different matter. Our members and others tell us that the new legislation just is not working, partly because there are no teeth in the law to force the FCS to comply with the intent of Congress.

Women Involved in Farm Economics is fearful that allowing the FCS the ability to have Money Market Savings program capabilities could have serious adverse effects on the borrowers. First and foremost, WIFE feels that the FCS must service loans of existing borrowers in a more timely manner to stop the mass exodus of borrowers from that entity before alternative programs are adopted. Secondly, the fear exists that were borrowers to place moneys in a Money Market account within the FCS and then face adverse conditions that the System would take those funds invested in Money Market to cure the delinquency.

The Spokane District and others are refusing to take "bail out" funds. This refusal to take "bail out" funds prohibits the System from coming under the Oversight Committee. Interest rates are not consistent even within a State. Interest rate reduction (paid for by the borrowers) are granted only to be raised again in a few days or months. The FCS is forcing borrowers into unwanted bankruptcies. According to Spokane Districts own statistics only about 10 percent of distressed loans are being restructured.

WIFE believes that the Agricultural Credit Act of 1987 was designed to do two things. The first to keep family farmers on the land and the second to have a stabilizing influence on available funds for the System. Neither one of these things are happening, at least not as far as the Spokane District is concerned.

Congress must share in the responsibility for the stress placed on the FCS borrowers by the System through their failure to put teeth in the law to force the "System" to comply with the intent of Congress.

Fifty percent of all calls received by Montana's farm hotline are from borrowers facing adversity from the Farm Credit System alone. The remaining 50 percent of calls relate to all other lenders along with, in some cases, the Farm Credit System.

Montana's Association of Churches has dispersed in excess of $70,000 in emergency aid to farm families since 1986. WIFE has provided $27,000 in emergency funds for food, medicine, and heat for homes and seed for crops since that date. We are finding it increasingly difficult to keep farm families fed. It is distressing to know that the very families who produce such an abundant supply of food for our Nation are all too often themselves without adequate nutrition. Rarely do any of these families have health insurance.

Family structures have been impacted tremendously by the stress of dealing with the lenders. Divorces among younger families, troubled teenagers often contemplating or attempting suicide, and a marked increase of stress related diseases in older borrowers have been the result of the past few years of trying to wash producers out of the System.

Given the fact that the average age of farmers is now something over 50 years, WIFE is distressed that there is no program with funding to help young farmers enter into agriculture.

The necessity for a congressional bail out of Commercial Banks, the Farm Credit System, and the Savings and Loan institutions are, of course, made necessary by segments of the economy not being on par with other segments. All new wealth created into our Nation comes from the production of raw materials. This production being paid for correctly, moves through the System allowing agriculture to pay its debts, allowing lenders to have a position of solvency and our Nation to enjoy a balanced budget.

WIFE strongly opposes borrowers and lenders alike being given timeframes of 45 and 60 days in which to conduct business of the magnitude of the Agricultural Credit Act. The decisions made in these instances affect not only the current borrowers, but generations to come.

The Spokane District FCS uses deficiency judgments when figuring least cost. Deficiency judgments should be applied for after foreclosure in a separate action, not figured routinely before the fact.

[Attachments follow:]

AGRICULTURAL ASSISTANCE PROGRAM

Number of calls received on the Farm HOTLINE, by month at the Department of Agriculture as documented on Weekly Status Report.

Month	1986	1987	1988	1989
January		157	73	78
February		94	51	64
March		114	54	164
April		61	54	155
May		72	49	[1] 154
June	73	65	48	....
July	39	58	25	....
August	64	21	47	....
September	128	19	27	....
October	107	51	46	....
November	83	59	41	....
December	117	65	68	....
Total	611	836	583	615
Total hotline calls received as of May 26, 1989: 2,645				

[1] Received as of May 26, 1989.

MONTANA FARM HOTLINE

[Department of Agriculture]

Type of calls	No. of calls	Total
Week of May 29 through June 4, 1989:		
Program people (PC-MED)	3	469
Information	2	696
Assistance request	3	607
Followup	26	584
Legal information	0	119
Miscellaneous	1	205
Total calls	35	2,680

Current peer counselor assignments	236
Total peer counselor requests	464
Mediation cases in process	4
Mediation cases pending	181
Mediation cases completed	9
Mediation declined by borrower	62
Mediation declined by lender	6

Mediation declined by bankruptcy	2
Mediation discontinued by requester	38
Total mediation cases	302
Financial consultant cases assigned	17
Financial consultant cases completed	102
Total financial consultant cases	119

MONTANA WOMEN INVOLVED IN FARM ECONOMICS—DECEMBER 1988

POSITION PAPER ON AGRICULTURE CREDIT

WIFE requests that the FmHA borrowers be given 45 WORKING DAYS to fill out forms dealing with foreclosures.

WIFE is concerned that the review process of loans selected for graduation is not clearly outlined to the borrowers.

WIFE opposes the rules that the FCS and the FmHA requires additional and excess security on liens above the amount to be financed.

WIFE is concerned that the FCS is not using FmHA guaranteed loans and they are therefore not passing lower interest rates on to borrowers.

WIFE is concerned that a borrower must apply for a lower interest rates, when they have a variable interest rate loan contract, but the FCS may raise interest rates at any time.

WIFE is concerned that new borrowers are given a lower rate of interest then established customers.

WIFE is concerned that the FCS is using a possible DEFICIENCY JUDGMENT when figuring "least cost," making it appear cheaper to foreclose.

WIFE would like to see the elimination of B stock.

WIFE would like to see interest rates be established at the time the contract for farm ownership loans (long term real estate loan) are written and that these rates not be changed at the discretion of the lender.

WIFE would like assurance that Federal funds allocated for restructuring or write-down on loans be used for that purpose and not administrative costs.

WIFE is concerned that the FCS is not complying with the intent of Congress and working to restructure loans. We would like Congress to require the FCS to follow the guidelines and intent set down in H.R. 3030 and to be held accountable to Congress.

WIFE is concerned that many of the lenders in the FCS system are lacking in training and knowledge of commercial agriculture lending practices.

WIFE would like to see the FCS achieve stability as a lender through lower interest rates, local controls and negotiating in good faith therefore establishing themselves as a reliable lender.

PREPARED STATEMENT OF PAM BALDWIN, PRESIDENT, IDAHO RURAL COUNCIL, NATIONAL SAVE THE FAMILY FARM COALITION, MERIDIAN, ID

I appreciate the opportunity to share my concerns about the implementation of the Farm Credit provisions of the Agricultural Credit Act of 1987. I own and operate a 150 head dairy operation with my husband and four children in Idaho. I currently serve as president of the Idaho Rural Council and coordinate a Farm Crisis Hotline working with Idaho farmers.

I testify here today on behalf of the National Family Farm Coalition, an organization of more than 40 organizations in 32 States who worked with you to ensure that the Agricultural Credit Act of 1987 was not just a bailout of the Farm Credit System but addressed real needs of its member/borrowers to strengthen everyone involved with the Farm Credit System. Many farmers are still waiting for these reforms to become a reality. We appreciate your continued leadership in conducting these hearings to evaluate how the act is actually working and to consider necessary legislative changes.

The intent of this legislation is to enable family farmers to restructure their farm debt allowing both agrilenders and agriborrowers to rebuild their businesses to a profitable production level. FCS Districts receiving the "bailout" funds had some additional requirements but all FCS districts are required to work with their borrowers to restructure farm businesses whenever the cost of such restructuring is the least cost alternative for the System. In many cases we are hearing reports that "deeds-in-lieu," foreclosures, and bankruptcies are being included in the overall restructuring statistics reported by Farm Credit Services.

I am one of the lucky "restructured" borrowers in the Spokane Farm Credit System District—the 12th District. The long-term goal of preserving my farm operation through this restructuring is a difficult if not impossible task. In 1986, my loan value was $149,000 and we were not delinquent. Efforts to restructure under forbearance were denied and our operating loan was terminated. In December 1988, we signed a restructuring contract that called for 3 years of interest only payments at 6¼ percent with a balloon payment of $170,000 due in 1991. My net recovery value was $156,000. While we are still farming today, feed prices have increased 70 percent over last year, our milk price has dropped .50 cents to $10.20/hundredweight and our other production costs continue to increase. We are now faced with the dual problem of having to restructure our restructuring plan due to increased production costs without any prospects of saving $170,000 to meet the balloon payment. A simple reamortization over the next 10 or 15 years could have resulted in a more realistic assessment of our farming operation and been a greater possibility of success. The numbers of restructurings in a district certainly don't tell the story of the viability of the farming operations at stake.

Although the expectations of many farmers throughout the country has been to work within the guidelines of the law to effectively restructure their businesses, both cooperation and consistency has been absent in most FCS Districts. We have identified several problem areas for investigation by congressional oversight committees and by the Farm Credit Administration, the agency mandated to oversee and regulate the Farm Credit System under the 1987 act. These are not new concerns. Some of these same areas were addressed last year at a hearing held by this subcommittee as well as in comments submitted to FCA in response to the proposed regulations. The failure to properly implement the law has meant lost opportunities for thousands of family farmers who have been denied rights that they should have received under proper implementation of the legislation.

RESTRUCTURING CALCULATIONS AND COSTS USED FOR FORECLOSURE

Although farmers and advocacy groups have repeatedly asked for the information necessary to compute both the costs of restructuring and foreclosure they have been denied access to the calculation process used by FCS. This shows a total lack of "good faith" on the part of FCS, who is charged by law to work with borrowers in determining the least cost alternative for handling delinquent debt problems. There are many cases nationwide where farmers have been denied access to FCS appraisal figures. In addition when such appraisals have been made, they are often higher than comparable sales figures suggest they should be. There is no process to address such grievances.

In addition it is impossible to discuss or negotiate a settlement with a lender who will not divulge the way in which they figured the net recovery value of the farm in question or their projected costs of foreclosure. Farm Credit System must be required to make this information available in order for restructuring to be accomplished and the goals of the legislation met. Our recommendation is to require that FCS lenders give full and timely disclosure of all formulas and calculations necessary to determine the relative cost of restructuring and cost of foreclosure as well as all documents and information needed by borrowers to complete a restructuring plan, and all standards by which FCS will evaluate the restructuring plan submitted by the borrower.

INTEREST RATES

In many cases farmers in the midst of restructuring have been offered "deals" at interest rates that are higher than those available at other lending institutions. Upon looking further into this matter, we have found farmers who are not delinquent who have been informed that their interest rates on FCS loans are also not competitive. This is at best a bad policy for a bank which must rebuild by generating new and profitable customers and appears to be unethical.

Farm Credit System Districts in some areas, have been raising the interest rates on loans for troubled borrowers for the past several months on a monthly basis. This causes an increasing problem for business viability, and it also makes it impossible for a farmer to make a restructuring plan projection which will be accurate. In order to be stable, a farm business which is dependent upon credit must be able to project interest costs for a year in advance in order to establish viability from year to year.

A third problem with interest rates is the system which places various farmers into a tiered interest structure. If, in fact, the goal of the Farm Credit System is to protect the businesses which make up their borrowers a uniform interest rate for all borrowers makes more sense. Such a policy would not penalize farmers who are struggling to rebuild their businesses, and would at the same time attract more stable business investments. We recommend the use of a standard rate of interest to be charged to all borrowers and each borrower must have stock in the association.

MEDIATION AND APPEALS

The Agricultural Credit Act of 1987 established a 50/50 Federal match for State funded mediation programs. FCS is required to participate in those States with certified programs. Unlike FmHA, there is no process for mandating creditor meetings when a mediation program does not exist. There is a review process of adverse decisions on restructuring plans by Farm Credit Services for those districts that have received bailout funds. We question what the reversal rate of these Credit Review Committee meetings have been.

FCS has often taken the position of tying up all assets with both first, second, and sometimes third mortgages, instead of working with all creditors to enable a business to rebuild. Such practices will ultimately kill a restructuring plan and end hope of resolution of other debt with the remaining creditors. We see strong mediation programs as the key to this process and urge support for the authorized level of $7.5 million for FY 1990 appropriations. We further recommend that FCS be required to mediate with borrowers and negotiate in good faith with the goal of working with other creditors to restructure the farm.

APPRAISALS AND RIGHT OF FIRST REFUSAL

There have been ongoing concerns with the rights of FCS borrowers to purchase their land out of inventory under both the right of first refusal provisions and homestead protection. Following enactment of the Ag Credit Act, thousands of acres of FCS inventory property was sold at public auctions totally ignoring the rights of previous owners. Family farmers have been forced into matched bidding against FCS at sheriff's sales or having to match a high bid that exceeded the appraised value of the farm. This seems totally inconsistent with congressional intent in passing the Ag Credit Act. The final regulations clarified some of the rights of previous owners yet there were no provisions for those borrowers whose land was already sold at public auction during the interim period.

Current practices have both denied previous owners their rights of first refusal through the use of public auctions as well as artificially increasing the price of the farm. This negatively affects both the ability of the previous owner to repurchase and the appraised value of other nearby farms.

Appraisals must be fair and independent. The borrower should be allowed to use any independent accredited appraiser. The appraiser should not have been employed by FCS or FmHA or accepted fees from either agency for work done on a retainer for the past 2 years.

PROBLEMS RESULTING FROM FCS'S NONCOOPERATION WITH FMHA

Part of the decision which allowed the use of Federal tax money to "bail out" FCS was based on the belief that such money would be spent in the best interests of the taxpayer. It would seem logical that FCS and other tax supported Government agencies would work together to ensure that the least cost alternative was reached through mutual cooperation. This has not been the case with FCS and FmHA. These agencies have in most cases refused to work together for the benefit of farmers. This is happening both on the individual level and has seriously limited the establishment and use of funds for the Demonstration Project.

Many farmers have real estate loans with FCS and operating and chattel loans with FmHA. Failure of these two agencies to work cooperatively with farmers to restructure forces the liquidation of farms and does so without fair consideration being given to the least cost alternative. We recommend that FCS and FmHA be required to work cooperatively in the restructuring process to ensure that the net recovery figures they calculate and the plan being submitted by the farmer accurately reflect the least cost alternative for the farm.

INADEQUATE OVERSIGHT OF FARM CREDIT SYSTEM DISTRICTS

It is our recommendation that Congress restates the role of the Farm Credit Administration as the regulator of the Farm Credit System Districts. The existing oversight by FCA is by their own admission "being done at arm's length." Instead, FCA should be required to publish detailed, implementing regulations and to establish a complaint/enforcement procedure for allegations of borrower protections violations. This procedure, however, should be an alternative—not an exclusive—remedy, and FCS borrowers should be allowed to proceed directly to court if they so choose.

We urge that a borrower be protected by having the right of private action in cases where his/her rights have been denied. Our experience over the past year has shown that when we have brought problems arising from the administration of the policies of the Ag Credit Act of 1987 to the attention of both the officers of individual Farm Credit banks, the District officers, and FCA that little attention has been given to our requests for proper implementation. Instead, we have been told "if you don't like our (FCS) policy, take it to court." While we think this treatment is counterproductive to the intent of the 1987 act, we are equally concerned about reports from different districts that farmers are being asked to sign contracts that include a "Mutual Release of Claims." This reads: Bank forever releases borrower, and borrower forever releases bank and all other Farm Credit System entities, from any and all claims or causes of action, contractual, tortuous, or otherwise, known, or unknown, arising from any act or omission prior to the date of this agreement." This type of agreement and the State by State attempts to dismantle lender liability laws puts farmer rights into serious jeopardy.

We do not believe that litigation is the best use of time and scarce farmer and Federal resources, but if farmers can get justice no other way, trials are the only viable alternative. In cases where there is no other alternative, we recommend that borrowers and former borrowers who are denied the protections set out in the 1987 Ag Credit Act have the express right to private action and an award of attorney fees if the borrower/former borrower prevails in the litigation. Such litigation should include a borrower's right to sue FCA specifically for failure to enforce the provisions of the Ag Credit Act of 1987. In addition such litigation should not be subject to any "gag" rules.

PROBLEMS OF FCS INTERNAL MANAGEMENT

Many of the internal management policies we have witnessed occurring in the Farm Credit System Districts have had an adverse effect on both the lending institution and the System borrowers. Policies of continual staff switches during the negotiation process has led to confusion and disrupted negotiations that has interfered with the restructuring process and in some cases resulted in the termination of viable businesses. We realize that there is a need for flexibility in the area of personnel in any institution. We recommend that in order to correct this damage, Farm Credit System banks be required to keep a running record of all transactions, meetings, negotiations, agreements, and information for each borrower, and that access to these records be given to the borrower upon request within 10 working days. This system should be modeled after the existing FmHA procedure.

Farm Credit System banks are associations and should formulate policies with their association membership. This membership input has been sorely lacking. Instead association meetings are controlled by a small number of stockholders and those who have called for a change in policy in some cases have been threatened by the actions of those who control their "purse strings." Our recommendation is that information on association policies and rights and responsibilities for stockholder be clearly and uniformly written for the Farm Credit District. This information should include notice of elections, meetings and policy decisions to be made at such meetings. Failure of Farm Credit Districts to inform stockholders of their rights, responsibilities, meeting dates and procedures or any attempt to discriminate or retaliate against stockholders should be grounds for damage suits.

DEFINING THE PROPER ROLE OF FCS

It has been our experience over the past year that banks which make up the Farm Credit Districts, have not been adequately using funds to restructure farm businesses. Although it is true that some farm businesses have been restructured during this period, figures claimed by FCS include restructuring done under the Federal Bankruptcy Code and from voluntary liquidations. The types of restructurings performed must be kept by each FCS District so as not to misrepresent their actions in complying with the Agricultural Credit Act of 1987.

It is our understanding that Farm Credit System banks were established to extend credit to the agricultural industry in order to foster the establishment of food security in this country. This specialized credit institution is necessary and vital given the nature of farming as a high risk business. We strongly believe that FCS institutions should be required to use their funds to underwrite and service to best meet the needs of their farmer/borrower/members. I thank the subcommittee for hearing my concerns today.

[Attachments follow:]

IDAHO RURAL COUNCIL
Box 88 / Carey, Idaho 83320
208-726-4553

TESTIMONY FOR THE SENATE AGRICULTURAL CREDIT SUBCOMMITTEE
HEARINGS ON FARM CREDIT SERVICE LOAN RESTRUCTURING UNDER THE
AGRICULTURAL CREDIT ACT
SUBMITTED BY THE IDAHO RURAL COUNCIL, PAM BALDWIN, PRESIDENT,
JUNE, 1989

On behalf of the Board of Directors of the Idaho Rural Council, a statewide farm advocacy organization, I respectfully submit the following testimony for the record of the Senate Agricultural Credit Subcommittee on the implementation of the Agricultural Credit Act of 1987.

We are providing a series of comments on the implementation of that Act by the Farm Credit Service as we have documented events over the last year. These observations come from a credit telephone hotline run by members of our organization and from an informal survey of FCS borrowers.

Generally, the comments we submit today are the same ones we raised with the Farm Credit Service on their draft regulations, in meetings in our state with 12th District representatives and with members of Congress over the year. Much to our concern, there has been no action either by FCS or Congress to alleviate the problems which seems to grow rather than diminish.

We have been bitterly disappointed with the actions of the Farm Credit Service toward its borrowers and disappointed there has been so little effort to implement the law in the best interests of all concerned. Instead a year and a half after restructuring under the Act began, the intransigence of that agency has led to unnecessary bankruptcies at needless expense to lenders and borrowers. We feel strongly that corrective legislation is desperately needed and may be the only way to end some of the hardships borrowers are experiencing. Among them are the following specific problems:

First, borrowers are denied the opportunity to see the FCS calculations used in deciding the viability of a loan. It is difficult for the borrower to work out the least cost alternative without knowing how each district is making that assessment. The information should be made available to borrowers before restructuring begins. Currently, the borrower only sees the calculations at the time of his credit review if at all.

Second, although the law itself and the letter from FCS to farmers clearly states the borrower's first plan will be viewed as "preliminary" it has not been treated as such. Many borrowers in the 12th district have been denied restructuring simply on their first draft submission. This was clearly not the intent of Congress.

Third, the review committee process has been dominated by loan officers. Even though the law excludes them from the committee, they often run the review sessions, control the information and inhibit borrowers for whom this appeal is usually their last chance. In light of this manipulation, the Idaho Rural Council would like to urge, as it has in the past, a procedure of judicial review so that borrowers may get an impartial hearing.

Fourth, the appraisal process is highly questionable. The appraiser is in the employe of the lender no matter which one of the three offered by FCS the borrower chooses. There are no specific qualifications or experience requirements in many cases for these appraisers. Independent appraisals obtained by the borrower at his expense are rejected even though the difference has been as great as $30,000 on a $70,000 piece of property as in a recent Idaho case.

Fifth, the FCS is often demanding provisions that are unrealistic and arbitrary. Many Idaho borrowers have been told they must pay out in full within three years or their loan will not be restructured. Others have agreed to plans with budgets they cannot meet in order to save their operations. Still others have had wages from off-farm jobs garnished to cover debt load based on appraisal values that are considerably more than todays market value.

Sixth, borrowers are being coerced into signing secrecy agreements on restructuring arrangements and statements that release FCS from lender liability suits--these before the lender will complete the loan restructuring. None of this should be necessary if FCS is dealing fairly.

Seventh, despite the fact that the act provides the borrower should have right of first refusal on his property prior to public auction, this does not seem to be happening. Clearly, the intent of Congress was to use the public auction as a last resort not a way to deny borrowers their right to regain their property.

Eighth, although the Act provides borrowers the right to stockholder lists many farmers have been refused or have been charged for such lists.

Finally, we earnestly hope it is possible for Congress to correct some of these problems. The last year has been one of great personal crisis for many who have tried to use the borrowers rights provisions of this legislation. Should the law work as Congress intended, we feel strongly much needless expense and litigation could have been avoided. We urge members of this Committee to produce legislation that will in the end benefit lender, borrower and taxpayer alike. Thank you.

TESTIMONY OF IDAHO FARMERS

SUBMITTED BY THE IDAHO RURAL COUNCIL
AGRICULTURAL CREDIT SUBCOMMITTEE
SENATE AGRICULTURE COMMITTEE
JUNE 19, 1989

The following testimonies were submitted to the Idaho Rural Council by farmers in the Spokane/12th District of the Farm Credit System as additional verification of the problems involved with the implementation of the Agricultural Credit Act of 1987.

Wayne Sheffield: "FCS refused to accept my restructuring plan under the 1985 Farm Act (forbearance). FCS said they would make a FmHA guarantee loan, but didn't. In 1985, I turned in a five year plan, FCS was fully collateralized and requested a milk assignment of $7,800.00 a month. At that time I was milking 200 cows and raising most of my own feed. The rest of the milk check had to support two families (my son works with me) and all remaining operating costs. In May, 1986, PCA released some money for planting crops. In July they took the checks away. FCS denied my restructuring plan under the 1987 Ag Credit Act. I was forced to file a chapter 12. I had tried to get an FmHA loan and even though I have DHIA records to prove milk production and a very good budget and farm plan, FmHA denied me on the grounds that I had only 4.5 years of DHIA records, not the 5 years they require. FCS then had the FmHA county supervisor testify against me in my Chapter 12 hearing. I had to sign over all my unsecured land and still got no more operating money. They didn't want to help anyone for some reason."

John Keppinger: Was forced into a Chapter 12 after negotiating since 1985. FCS never accepted the appraisal value of the property. The real property was half the value of the note. The amount owed was $120,000. Federal Land Bank's appraisal was $70,000. The Chapter 12 appraisal value was $43,000. Prior to filing this spring, there was a plan worked out with FCS to repay. Mr. Keppinger received a $50,000 insurance claim from a five year old bodily injury suit which was not collateral on the FCS loan and at that time FCS refused to sign the contract, asked for $30,000 in acquired interest, and began foreclosure proceedings.

Stenzel: FCS refused to allow an independent appraisal. They wanted $40,000 on a home worth $25,000 from a farmer who was disabled and wanted only to keep his home for his family. This was finally settled after the destitute family found a negotiator, but had incurred $1,500 in attorney and other fees.

Lehman: Federal Land Bank stood by an unreasonably high appraisal and refused to restructure under the Ag Credit Act causing this farm operation to have a low cash flow which led ultimately to default on a three year FmHA guarantee loan with First Security Bank. First Security Bank then forced FmHA to pay out the secured note after only one year and foreclosed on the 10% deficiency. Unable to negotiate with FSB, FLB, or get operating money from FmHA (even though they should have honored the 3 year contract and not paid First Security Bank after the first year), the Lehmans have lost their land through a sheriff's sale and are no longer farming.

Bill Hall, Nevada: FCS refused to restructure, forced Halls into a Chapter 11, stay was lifted, land seized, cattle sold, because FCS would not accepted the capitalization value of the land for the appraisal value. In a court ordered MAIA appraisal land was valued at $450,000, FCS bought at sheriff's sale for $525,000, and Now FCS has appraised the property for $650,000. Last week in State Supreme Court decision, it was decided that Halls were not allowed to restructure under the Ag Credit Act of 1987. Good ruling, but they have lost their cattle and will have to fight in court for the right to buy back at the $450,000 figure.

Rayburn, Oregon: In a very recent "restructuring" Rayburns were required by FLB to give a deed in lieu for a portion of their property with no reduction in interest on the remaining FLB loan. This will mean a very tight cash flow and unless cattle prices stay high could jeopardize the ability to fulfill the contract.

Dairyman, 60+ yrs. old: Had a FLB loan at a fixed interest rate of 6.75%--was told that when he got behind in payments he was being subsidized by other farmers and they would have to raise his interest. Was forced into bankruptcy in 1987, out in March, 1988. FLB raised milk assignment, took papers to his home to have them signed, illegally tampered with papers to cause milk assignment to be taken out of check twice a month instead of once. These people are being starved off the land--living by begging for a portion of their milk each two weeks--sharing their Social Security check with their son and family to keep food on the table. They don't know how they will turn their water pumps on.

Stegelmeier: A case where FCS decided they did not have to stop foreclosure action while restructuring. When faced with court action, negotiated settlement.

Grant Dobbs: Ranchers who offered FCS Net Recovery Value restructuring at MAIA appraisal of $1050 a cow unit. FCS wanted $1575 a cow unit on 350 head. Would not accept Dobbs' offer and forced them to file a Chapter 11. Combined attorneys fees of Mountain States Savings Bank and FCS on this case are over $100,000.

There are cases of contracts being signed for more than the total amount debt owed, contracts with agreements to allow FCS to have audits at anytime at the farmer's expense, security agreements that are too all inclusive, for example "All milk now owned or hereafter produced and proceeds of mild produced by Debtor's dairy cattle and all rights to assignments thereof. All proceeds thereof, whether now owned or hereafter acquired shall include, but not be limited to general intangibles, chattel paper, accounts receivable, contract rights, drafts, all cash or non-cash proceeds and all insurance proceeds" (in this case the payment was only $735.00 and they wanted rights to everything) and secrecy agreements which would nullify the restructuring if the farmer disclosed the terms of his restructuring.

There are hundreds of other cases we have received over the hotline from Idaho, Oregon, Washington, Nevada, Utah, California and even as far away as New Mexico with the same problems that have been outlined here. The restructurings that have been done with concession by the FCS have consistantly been done through the courts, through threat of court action, or through use of very skilled negotiators or attorneys. The states with mandatory mediation have a much higher rate of restructurings and at a much lower expense to both the Farm Credit System and to the individual farmers. We would like to see a breakdown nationwide of the number and nature of the restructurings done through legal action by the farmer versus those done in a conciliatory manner.

We would like to sincerely thank the members of this Senate Subcommitte for taking the time and interest to follow up on the implementation of the Ag Credit Act. Our hopes are that after the testimonies that have been given, you will now take action to make the Farm Credit Services side of the law address the problems we are seeing in the field and allow less latitude for interpretation of the law by Districts and even individual loan officers.

FEDERAL LAND BANK HISTORY OF:

George H. and Joyce H. bowles
Star Route Box 354
Grace, Idaho
Phone: 208-427-6653
FLB Loan # 170425-8

Dairy farmers, located 10 miles S. of Grace, Idaho. Moved to this farm in May 1969. Farm consists of 324 acres. Appraised in 1977 by FLB, Loan Officer for $220,000.00. On 4-19-88 a Loan Officer appraised the same farm for $130,000.00.

In 1986 we were aware we were becoming delinquent despite our monthly dairy assignment. We had dairy assignment of $620.00 from 1977 to 1984.

We experienced a disaster in 1982 with the dairy herd. a hoof trimmer was responsible for the death of 25 registered cows out of a herd of 120 cows; he was on drugs. He was convicted and sentenced to a jail term. We were told it would be approximately 5 years to recapture a $200,000.00 loss; but our monthly assignments kept on. Because of less cash flow we asked and received released money of approximately 2700.00 for expenses on the farm. In 1984 we made that up with payments of $1,786.00 for 8 months. This added burden was because of the increase of interest. At that time we increased our dairy assignment to $800.00 a month. In 1985 we needed money for hay; First Bank and Trust said they would help; they closed and we had to purchase hay for $90 a ton. Both FMHA and FLB refused to release any money. FDIC helped us locate some hay; it was of poor quality (mold) and we lost 15 more cows.

Dale
December "87 we visted with the manager; he was aware of our circumstances; we declined to talk to the Credit Manager because of his reputation with other borrowers.
[illegible]

February 1988, we were informed we were eligible for distressed loan restructuring. We met with the Manager and signed the FORBEARANCE AGREEMENT. We were assigned to the Loan Officer.

May---we asked for 81/2 for 3 years and then back to variable rate. We were turned down but given an alternative: increase from $800 to $820 a month at 12.25 for 20 years--reply in 10 days.

Asked for a Credit Review. Were unsure of what we owed at that time. Noticed they used $73,600.00 for a figure.

Loan Officer said we are aware that "you Joyce have been around the block" and understand the law.

Loan Officer also said, "What would be our incentive". I was shocked and said, "that, you mean that to help a farmer stay on his land is no incentive? You're telling me today that because of "least cost you could forclose on us? "I guess that is what I mean."

May 26, we requested a Credit Review for reconsideration of our Application for Restructure.

Credit Review held on June 21. Denied. We only asked for 10% for the first three years and back to the variable rate.

June 23rd. The original decision was upheld based on the fact that the restructure does not reflect the least cost to the FLB. The cost of the restructure would be greater than the cost of foreclosure. They did give consideration to a concession in interest rate for three years to 11% for three years.

Because we were not sure how much we really owed (after confering with our attorney, Jim Sorensen, we asked for an extension of time from Representative Stalling"s Office until we could have a complete history from Spokane. We also visted with John Hatch from United States Senator Steve Symms' Office and he also corresponded with the Spokane office. We finally received a copy of our FLB account and took it to our CPA, Mr. Gale Leetzow who prepared our payment record. From this we were able to determine many things. From 1980 to 1984 we showed a minus in principle being applied (the dairy assignment was not large enough to cover the loan due to the constant rise in interest rates). We made that up in 1985 and increased our dairy assignment to $800 a month.

We met again in Preston with the Loan Officer. We agreed to leave the dairy assignment to $800 a month with the monthly payment at $775.00 for 20 years at 11% for 5 years. Irene asked that approximately $9,000.00 be forgiven because of insufficient anddeceiving monthly statements that are not clear. Special Loan Officer denied this, and said that we had been given concession.

The story ends here with this 11 year history:

Interest applied on this $76,000.00 note has been $88,779.45 .
Principle applied in that time (because of delinquency is $926.18.
New note restructured is $75,073.82.

AND

Although we were told they were greatly secured a SECURITY AGREEMENT WAS given to to sign for the enclosed. We have not signed and find that it is in contempt with what was said and signed on the RESTRUCTURES AGREEMENT "in the amount of annual installment"

①

5-27-89

Bryant Wright - Federal Land Bank.

Due to financial situations in June of 1984 we filed a Chapter 13 bankruptcy. This bankruptcy is not for farmers so on March 16th 1987 we filed a Chapter 11. This also could not work for us so when the Chapter 12 for farmers came in we filed in May of 1987. We were dismissed from the Chapter 12 on Feb. 2 1988. We were never confirmed in any bankruptcy.

From Dec. of 1987 we had been talking with F.L.B. about a Deed-in-Lieu.

On Feb. 12 1988 we recieved a letter from F.L.B. stating we had a right to restructure. (exhibit 1) This letter states we have an active restructure, Deed-in-Lieu application.

On March 29th they recieved our application for restructure with a note stating our Tax returns would follow.

On March 31st, two days after they recieved our restructure notice, F.L.B filed foreclosure in the District Court in Madison County. The papers had been filled out Mar. 3rd. The Farm Credit Act states: "No qualified lender may foreclose, or continue any foreclosure proceeding with respect to any distressed loan before the lender has completed any pending consideration of the loan for restructuring under this section."

②

We were not notified of this action. Our neighbor saw it in the paper & told us.

On April 11th our restructure was denied. One reason was cash flow analysis does not show reasonable probability of orderly debt retirement. They did not recieve our cash flow analysis until April 15th. (exhibit 4) We never recieved a phone call or any inquiry about our cash flow.

Georgia Dixon from Senator McClures office called Reed Gardner and he said if everything was not filled out correctly on the restructure form or not there, Mr Boehme should have contacted us and we should have been given 15 days to correct it.

They recieved our tax returns and cash flow Apr. 15th and denied it again on Apr. 15th. (exhibits, 4-5)

On April 18th we sent in our letter requesting a Credit Review hearing.

Our hearing was set for April 25th. We were the very first Credit Review hearing in the district. There were restructure applications sent in ahead of us. (We have a friend that sent their restructure papers in right after ours and they did not hear any thing until Oct.)

③

The hearing was a total joke. Irene Beard & Bryant attended. Mr. Boehme went through all our past bankruptcies and all the reasons why we shouldn't be given a chance to restructure. All of the others were given papers except Bryant & Irene. Irene finally ask for something so they could understand what was going on. One of the men on the Committee, LaVar Newman, stated that he had no patience with the bad loans, and it was loans like ours that caused his interest to be up. They upheld the denial.

We held several meetings with F.L.B. to work out purchasing our home. They did agree to break the home from the ground and we could buy the home for *53,000.00. But they needed 20% down and we would be treated as a new loan. We did not have 20% down & also could not quality as a new loan.

F.L.B set Aug. 1 for our Summary Judgement hearing. On Aug. 1 181 day after we were dismissed we filed another Chapter 12. This was the only way we could get them to work with us.

We converted to a Chapter 7 because Mr. Boehme said they could not accept a Deed-in Lieu until

(41)

all other liens were cleared.

We had another Summary Judgment hearing in Dec. We did not appear because we were working with Mr. Boehme on a Deed-in-Lieu.

We asked if we could stay until spring. He said they could not do anything until the Chapter 7 was finilized, which was Mar. 7, 1989.

Bryant called Mr. Boehme around Mar. 1st. He told him we didn't want our names in the paper and we were willing to give a Deed-in-Lieu. He said he was to busy but he would call us.

On Mar. 29th Steven Malan called me and asked about the Deed-in-Lieu. Between when Bryant talked to Mr. Boehme & when Steve Malan called me, we found a buyer for the ground. At that time we thought he was a cash buyer. I told Mr. Malan we had a buyer for the ground and we would like to work something out on the home. I never said anything about not giving a Deed-in-Lieu. I told him we were going to Oklahoma and would be back around April 5. On March 31 they noticed us for a Sheriffs Sale.

We also read this in the paper, without being told. We even had a meeting set for April 10 to talk.

Testimony on Borrower's Rights

(Farm Credit Act of 1987)

June 19, 1989

Senator Kent Conrad
Chairman
Subcommittee on Agricultural Credit
U.S. Senate
Washington, D.C.

From: David W. Folsom
3234 Parkhill Dr.
Billings, Mt. 59102

I represent 54 distressed borrowers throughout the State of Montana. My background includes five years of mortgage and contract banking.

Primary Concerns:

1- The 12th District of the Farm Credit System in Spokane has failed to make the least-cost analysis and the review appraisals readily available to the distressed borrowers. The general attitude of the loan officer is if you do not understand your rights we will not tell you your rights. Example: "If you do not request a copy of the least-cost analysis withing 10 days of your restructure proposal rejection, you will not be entitled to same".

2. The distressed borrower has been told repeatedly that there will be no reduction in the balance owed on his account because the 12th District is not taking the bail-out money provided by Congress. There is a desparity between what Spokane states as their policy for restructuring and the local FCS office practices.

   The distressed borrower has a distinct disadvantage because the local loan officer uses a very sophicated calculator to establish the maximum return to the F.C.S. even if his calculations exceed the intent of the Farm Credit Act.

3. There has been an arbitrary handling of distressed accounts as to when legal action is initiated and concluded, especially as it relates to larger balance accounts. (list included) Included in this list is one account where no action has been taken for eleven months on an outside appraisal, thus no ruling on the restructure proposal.

   Where there is a junior lienholder such as S.B.A. or F.M.H.A., there is no consideration for a joint reduction of debt, thus the government becomes the bailout.

Summary: There has been a general reluctance to proceed with restructuring including accrued interest reduction, principal reduction and interest reduction in order to make a loan viable from this point forward. I would suggest that Congress request that the 12th District set up new policy for proceeding with restructuring prior to receiving their bailout request.

Respectfully submitted by David Folsom
(406) 652-4315

Mr. Duane Marshall

Executive Vice President
Farm Credit Services
12th District
Spokane, Washington

Dear Mr. Marshall:

Mr Dan Foster and myself would like the opportunity to come to Spokane to discuss the distressed loan files listed below. We would like to do this Wednesday March 22nd and Thursday March 23rd.

I have submitted authorizations signed by each of the borrowers to each of your respective local F.C.S. offices.

The purpose of our coming to Spokane is to improve communications and to present some additional perspectives that could lead to resolve of these loans.

As you may know Dan Foster spent the past four years as a legislative assistant to Rep. Pat Williams in Washington D.C. and now works as an independent Legislative Consultant in Montana. I have employed him to assist me in the restructuring of Farm Credit borrowers in Montana.

The following accounts are those we would like to include in our discussion while in your office in Spokane.

BORROWER	ACCT#	CITY	APPROX. DEBT
✓Pryor Land Co.	FLB#154752-5 #161086-7	Billings	$2,300,000
Keil Farms	PCA#0178160 FLB#155846-0 #144880-1	Great Falls	$3,023,360 (all inclusive)
John Keil and Sons	FLB#197195-9 PCA#0178152	Great Falls	
Ron Fulbright	FLB#179020-8	Lewistown	$1,100,000
* Robert Johnson	FLB#01913736	Missoula	$1,000,000
Bill Uffelman		Billings	$ 720,000
Gary Iverson Triple I Farms		Great Falls	
Rex Bohn Jerry Bohn	FLB#192213-8 FLB#199745-0	Billings	$ 725,000

David W. Folsom

* 11 months no ruling on appraisal.

LAW OFFICE
OF
COWIN & HRDLICKA
AN ASSOCIATION INCLUDING A PROFESSIONAL CORPORATION
2ND FLOOR IMPERIAL SAVINGS BUILDING
2150 TULARE STREET
FRESNO, CALIFORNIA 93721

WILLIAM L. COWIN, INC.
STEVEN R. HRDLICKA

AREA CODE 209
TELEPHONE 445-1234

June 12, 1989

Senator Kent Conrad
Room 361, Senate Dirksen Office Bldg.
Constitution Ave. & First St., N. E.
Washington, D. C. 20510

RE: Agricultural Credit Act of 1987

Dear Senator Conrad:

As you may know this past week, I, along with my wife, a client, Donald Jackson, and various officers of the American Agriculture Movement organization met with members of your staff in reference to abuses by Farm Credit System institution members of the Borrowers' Rights provisions of the 1987 Agricultural Credit Act. I want to take this opportunity to thank you on behalf of myself and the other parties attending those meetings for allowing your staff to take time from their busy schedules in order that we could present what we know to be critically important issues to farm families across the nation today.

I have been informed that there will be oversight hearings in reference to the 1987 Agricultural Credit Act commencing this forthcoming week. In an effort to assist in those hearings, I enclose herewith executed testimony from two of my clients which, I believe, represent common issues facing all farm families in America today in reference to their Borrowers' Rights under the 1987 Agricultural Act. The Jackson testimony illustrates the problems that farmers are having in regard to their right of first refusal to lease and/or repurchase their property and the Yarbrough testimony illustrates the problems farmers are having in regard to their rights for debt restructure.

Farm Credit System has taken the position that farmers do not have a "right of private action" to litigate for purposes of enforcing their Borrowers' Rights under the 1987 Agricultural Credit Act and in that regard, numerous cases have been filed across the country and the courts have rendered split decisions respecting whether farmers have the right to seek court assistance in securing their Borrowers' Rights under the 1987 Agricultural Credit Act.

Attached to this letter is a draft of a proposed addition to the Agricultural Credit Act that would correct the dispute respecting the right of private action. I have previously supplied your office with this draft.

I also enclose with this letter a March 15 letter from Jim Massey with Farmers Legal Action Group to Senator Conrad which clearly and concisely sets forward all the issues and problems confronting American farmers in regard to their Borrowers' Rights under the 1987 Agricultural Credit Act. In my representation of farmers in the San Joaquin Valley, I have experienced every problem with Farm Credit System institutions that is set forward in Mr. Massey's March 15, 1989, letter which, as noted above, is a summary of the current abuses of Borrowers' Rights by Farm Credit System institutions.

I also enclose sample agreements between clients of mine and Farm Credit System institutions which illustrate the "outside formal debt restructure" agreements Farm Credit System negotiates after they turn down a farmer's debt restructure application.

I personally have spent my entire life involved in agriculture in the Fresno area of the San Joaquin Valley. I was raised on a farm in the Caruthers area and have been actively involved in owning and personally operating my own farm property since I completed college in 1967. My involvement in agriculture goes beyond personally owning, personally operating, and currently living on our farm in the Kingsburg area inasmuch as I have also been involved as a banker in financing agriculture and more recently as an attorney litigating for farmers who are seeking to retain their farm properties. With all my mind, heart and soul, I firmly believe that the longterm interests of this nation in regard to food and fiber needs of this nation's populus will be far better served through private ownership of the agricultural forces of production of this country by farm families as opposed to ownership by a few companies. I sincerely believe that the tremendous movement in this country over the past ten years towards a consolidation of agricultural properties in the hands of a few corporations and foreign investors will result in Americans paying a tremendously increased amount of their spendable income for their food and fiber needs and the nation will be faced with artificially-created shortages in order to stimulate short-term profits and to regroup losses due to mismanagement just as we are currently witnessing in the oil and power industries.

American farm families have always been satisfied with owning their property and experiencing a modest profit return for their labors whereas corporations uniformly seek to reflect a return to their investors of at least 15 to 20 percent. The current generation of Americans have a solid obligation to the future generations of Americans to protect American agriculture and insure that food and fiber will be available in the future on a constant and predictable basis and at an economically sensible cost to the consumer. If we do not immediately make all efforts to stem the tremendous tide of family farm foreclosures and assure that the competitive spirit in agriculture is continued via the vehicle of family farm private ownership of American agriculture, then we are most assuredly drafting the blueprint for future farm product disasters in this country.

The 1987 Agricultural Credit Act was designed by Congress to be a relief package and Godsend to American farm families. However, the 1987 Agricultural Credit Act is virtually being disregarded by Farm Credit System institututions just as they disregarded the 1985 Agricultural Credit Act.

I hope the enclosed documents can be of assistance to you in clarifying the issues and if we can be of further assistance to you, please do not hesitate to contact us.

Sincerely yours,

COWIN & HRDLICKA

William L. Cowin

WILLIAM L. COWIN

WLC:cmk
Enclosures

cc: David Senter, National Director
American Agriculture Movement

cc: Don and Patricia Jackson

cc: Leo and Joyce Yarbrough

cc: James Massey
Executive Director
Farmers Legal Action Group

Part G -- Miscellaneous

"SEC. 4.40. RIGHT TO BRING LITIGATION.

"(a) Definitions.

"(1) Person. As used in this section, the term person means any current or former borrower of any Farm Credit System institution.

"(2) Farm Credit System Institution. As used in this section, the term Farm Credit System institution includes only:

"(A) the Farm Credit System Assistance Board;

"(B) Federal Land Banks, Federal Intermediate Credit Banks, and their successor Farm Credit Banks;

"(C) Federal Land Bank Associations, Production Credit Associations, and new associations resulting from mergers authorized by this Act;

"(3) Standing. As used in this section, a person shall have standing to bring litigation if s/he/ has been, or will be, directly and adversely affected by the action(s) or omission(s) of a Farm Credit System institution.

"(b) Right of Action.

"Farm Credit System Institutions. Any person with standing shall have the right to bring litigation against a Farm Credit System institution to enforce any duty, standard, or limitation owing to such person under this Act, and/or for damages for breach of any such duty, standard or limitation.

"(c) Jurisdiction.

"The United States District Courts shall have original jurisdiction over suits brought under this section, without regard to the amount in controversy, concurrent with state courts of competent jurisdiction.

"(d) Damages

"Any person who prevails against a Farm Credit System institution in litigation for damages shall be entitled to his/her/ damages or $1000, whichever is greater.

"(e) Attorneys' Fees.

"In any litigation brought under this Section, a prevailing person shall be awarded reasonable attorneys' fees.

"(f) Other Remedies.

"This section shall not affect the right any person may otherwise have under this Act or any other statute to sue any institution of the Farm Credit System or the Farm Credit Administration."

"(g) Applicability.

"This section shall apply to any action pending on or commenced after the effective date of this section.

TESTIMONY OF LEO AND JOYCE YARBROUGH

June 12, 1989

Leo and Joyce Yarbrough
614 West Rose
Fresno, California 93706
(209) 864-8633

Biographical Information

Leo attended schools in Selma, California, a farming community approximately fifteen (15) miles south of Fresno, California. Leo graduated from Selma High School in 1955 and during his years at Selma High School, Leo took the agricultural curriculum courses.

Leo was in the naval reserve from 1953 to 1960 and served active duty for two years between 1956 and 1958. After Leo was discharged from active duty in late 1958 he acquired a 20-acre Thompson vineyard with a home located on the property in Selma. In addition to operating the 20-acre vineyard, Leo held a full time job as an engineer, working the swing shift from 4:00 in the afternoon until midnight. Leo held this job for 14 years and performed his farming operations during mornings and weekends.

Joyce Yarbrough graduated from Roosevelt High School in Fresno, California in 1959 and attended beauty college, obtaining a certificate as a cosmetologist.

Leo and Joyce were married in 1962 and set up residence on the above described 20-acre vineyard acquired by Leo in 1960. Joyce worked full time as a cosmetologist until the birth of their first son, Roger, in 1964. Thereafter, Joyce worked part-time. The couple had another son, Troy, in 1966 and a daughter, Kristi, in 1971.

Commencing in 1972, Joyce began work as a full-time receptionist-bookkeeper for a group of pediatricians in Fresno and has worked continuously for the pediatrician group thereafter.

In 1965, Leo and Joyce sold the described 20-acre vineyard on which they resided and acquired the 40-acre vineyard where they currently live at the above-referenced address. The 40-acre vineyard was composed of 19 acres of Thompson vines and 21 acres of Muscats, including an older home. Leo and Joyce removed the Muscat vineyard and replanted with Thompsons and 6 acres of kiwis.

In 1971 our home was destroyed by a fire and the we replaced the home with a mobile home.

In 1974, we acquired an additional 60-acre Thompson vineyard which was located at within one mile of their 40 acre home place. At that time, Leo discontinued the swing shift job he had held for the prior 14 years and commenced farming the 100 acres of vineyard and kiwis on a full time basis.

In 1982, we built the current home that we reside in on the 40-acre parcel at the above-referenced address on Rose Avenue. Although the 40-acre vineyard on which we reside has a Fresno address it is located in the Caruthers area, a farming community approximately 18 miles southwest of Fresno, California.

In 1983, we refinanced the 40-acre vineyard property, the 60-acre vineyard property and the construction costs of our new home by taking out a loan with Federal Land Bank of Fresno for $461,000.00, which grew to a total of $518,000.00 by virtue of loan fees, escrow expenses and Federal Land Bank stock.

Current Difficulties with Federal Land Bank Indebtedness

Bank of America had been our historic crop lender for our properties. We had never experienced any problems with Bank of America until crop year 1984 - 1985. It is a fact ~~that~~ commencing in crop year 1984, vineyard farmland prices began a steady decline and the prices received for Thompson raisins began a decline which eventually leveled out at approximately thirty-five percent (35%) of the historic amounts for raisins paid to raisin growers such as ourselves. During crop year 1984 - 1985, we were informed by Bank of America that Bank of America intended to cut back on their farm loans and that as of crop year ending 1984, we should plan on obtaining crop financing for crop year 1985 from some other source.

Accordingly, we applied at FHA for financing but were turned down. In order to alleviate the cash flow problems, Leo commenced working on the outside again on a full-time basis as a construction engineer in highway building and farmed the property on nights and weekends with assistance from our two sons.

Bank of America did provide some crop financing during crop year 1985 but refused to provide a crop budget that included our annual payments to Federal Land Bank and sufficient to pay the property taxes. Finally, in approximately August or September of 1985 we sought legal counsel in regard to the difficulties we were having with Bank of America and Federal Land Bank. An agreement was reached on September 17, 1985 with Bank of America and Federal Land Bank under which Bank of America agreed to provide for a crop budget for crop year 1986 and crop year 1987. However, the crop budget only provided for above minimum direct cultural costs and was conditioned on Federal Land Bank specifically agreeing to accept the 1985 and 1986 kiwi crop proceeds in lieu of the normal annual payments. Furthermore under the Agreement Federal Land Bank agreed to not commence any foreclosure proceedings prior to the normal annual payment due date in crop year 1987. Attached hereto as Exhibit "A" is the September 17, 1985 agreement between Federal Land Bank, Bank of America and ourselves, under which Federal Land Bank agreed that our annual payments would be suspended until crop year 1987.

Commencing in early crop year 1987, we held several meetings with Federal Land Bank,and the Federal Land Bank officials stated that if we would agree to a release of the 60-acre vineyard property to Federal Land Bank that Federal Land Bank would not foreclose on our 40-acre home place and would work out an acceptable loan on a long-term basis regarding our 40-acre home place. Federal Land Bank agreed to release the 1986 kiwi crop proceeds provided said funds were used for the 1987 direct farming costs only, without any allowance for living expenses. By April, 1987, an agreement was still not reached with Federal Land Bank regarding retention of our properties with sensible indebtedness on said properties based on current land values and the funds for the 1987 farming expenses were exhausted.

We were then advised by an attorney that we should file a chapter 12 bankruptcy proceeding and that under a chapter 12 bankruptcy proceeding the indebtedness on the farm property would be lowered to the market value of the property as established by appraisals. We were also advised that a chapter 12 plan could then be effectuated which took into account the property's value and income making potential to service the new restructured indebtdness.

Accordingly, on April 16, 1987, we filed a chapter 12 bankruptcy proceeding and continued to farm the 100-acre farm property as a debtor in possession. On August 26, 1987, we filed our chapter 12 plan which was vigorously opposed by Federal Land Bank via an extensive opposition filed on September 10, 1987.

Our chapter 12 plan reflected an appraisal of the 100-acre property at $432,000.00 and Federal Land Bank, in their opposition to our chapter 12 plan indicated that the thrust of their opposition was that the farm property was valued at $510,000.00.It is interesting that on October 22, 1988, Federal Land Bank had the property appraised again and the appraisal amount was $469,000.00, which is strange when one considers the fact that commencing in 1987, vineyard properties began a steady increase in property value. Accordingly, the appraisal relied on by Federal Land Bank in their September 1987 opposition to our Plan should have been less than the $469,000.00 appraisal made one year later in October 1988.

After Federal Land Bank filed the opposition to our chapter 12 plan September 10, 1987, our attorney informed us that he did not believe we would be able to confirm the plan and that we should work something out with Federal Land Bank informally. Our attorney advised us that Federal Land Bank had stated to him that if we agreed to release the 60-acre farm property then Federal Land Bank would assure us that we would be able to retain our 40-acre home place with a reasonable indebtedness thereon, including a reasonable payment schedule. These representations are supported by several letters from the Federal Land Bank Attorney to our Attorney.We wanted to retain the full 100-acre farmstead inasmuch as now that our children have grown up and left home, it was our belief that a 100-acre vineyard property with a reasonable debt was an economic unit that would provide us with a reasonable living on a basis where Leo would not have to work outside full-time while taking care of the farm property.

On January 21, 1988, we converted our chapter 12 proceeding to a chapter 7 proceeding at the urging of our attorney and based on written representations that he had received from counsel for Federal Land Bank that if we converted to a chapter 7, Federal Land Bank would foreclose on the full 100 acres and reconvey the 40-acre home place to us for a reasonable purchase price, which would be one hundred percent (100%) financed by Federal Land Bank on terms acceptable to us.

At the time we converted to the chapter 7, we were unaware that the 1987 Credit Act had passed and that January 6, 1988 was the effective date and that under the Act Federal Land Bank was required to offer formal debt restructure to us in accordance with the 1987 Act. Our attorney advised us to discontinue expending any sums toward the 1988 farming expenses which greatly alarmed us, inasmuch as we had owned the properties for many years and felt it was not in the best interest of the property or ourselves to simply abandon the property. We then sought legal counsel from a different attorney who had been recommended to us by friends and the new attorney strongly advised us to go ahead and continue farming the property and taking proper care of it. He also advised us of the passage of the 1987 Agricultural Credit Act and of our new borrower's rights under the Act.

tured indebtedness to be properly considered should be in line with the property value. Accordingly, representing that the restructure was being turned down on a basis that the restructure amount we were offering was less than the outstanding indebtedness is totally contrary to the intent and letter of the law of the 1987 Act.

The second reason for denial was that our repayment history did not support our ability to reestablish a viable operation in order to repay the loan on a restructured basis. This is totally incorrect inasmuch as our loan history had been totally agreed to as set forward in the attached September 17, 1985 letter agreement between Federal Land Bank and Bank of America. Additionally, it does not seem logical to turn down a debt restructure on the basis that a party has been late on their payments because the definition of a distressed loan includes being late on a payment, otherwise, why would a farmer be offered debt restructure in the first place? We have attached hereto as Exhibit "B" a copy of the December 22, 1988 denial letter.

Our attorney requested a credit review committee hearing, which was scheduled for April 20, 1989. After requesting the credit review committee hearing, we obtained the Federal Land Bank appraisal and based on the Federal Land Bank appraisal of the 60-acre parcel and the 40-acre parcel, when we attended the credit review committee hearing, we informed the credit review committee that we would modify our debt restructure request to provide for a release of the 60-acre farm parcel to Federal Land Bank and we would retain the 40-acre home place on a basis of the amount set forward in the Federal Land Bank appraisal, with the repayment being on standard interest rate and repayment terms. The credit review committee informed us that they could not approve our debt restructure request as modified and strongly urged us to return to the Federal Land Bank office and work the matter out. They did indicate that they could perceive no problem with an acceptance of our modified debt restructure request. Accordingly, a meeting was scheduled during the credit review committee hearing with Mr. Mark A. Hodvedt, which took place on May 8, 1989. On April 24, 1989, the credit review committee declined our debt restructure request and again, in their letter, encouraged us to continue working with Federal Land Bank. Attached hereto as Exhibit "C" is a copy of the April 24, 1989 denial by the credit review committee.

On May 8, 1989, we met with Mr. Hodvedt at the Fresno Federal Land Bank offices and submitted our formal written proposal to Federal Land Bank under which we proposed to retain the 40-acre farm property at the exact appraisal amount established by Federal Land Bank's November 10, 1988 appraisal, on a basis of a loan at the current standard Federal Land Bank interest and repayment plans. Unbeknown to us Federal Land Bank, on May 4, 1989, had

Based on our new attorney's advice, new meetings were held in approximately mid-summer of 1988 between ourselves, our new attorney and Federal Land Bank, which had also acquired new counsel. Initially, we were informed that the Agricultural Credit Act did not apply to us because we were in a chapter 12 and had converted to a chapter 7 but that research would be done on the subject by Federal Land Bank and that as soon as a policy on the issue was determined then by Federal Land Bank of Sacramento would be informing us of whether the 1987 Act applied to us or did not apply to us. Accordingly, during crop year 1988, we were under great apprehension not knowing whether we would be receiving a foreclosure notice, a lawsuit, nothing at all and we were forced to farm the property with no budget.

On June 22, 1988 we were discharged from the chapter 7 bankruptcy proceeding and the chapter 7 trustee abandoned the 100-acre farm property and all assets of our estate. Throughout crop year 1988 we were unable to obtain any crop budget monies and accordingly, we farmed and maintained the property as best as we could with the incomes from our outside jobs. Due to the strange status that we had been placed in by Federal Land Bank, along with their prior attorneys and our prior attorneys, we were in effect in a twilight zone of not knowing exactly what to do and accordingly we could not obtain the funds necessary to completely and properly maintain the property and insure a maximum crop. Accordingly, crop year 1988 was a modest crop production year for our property.

Finally, on October 24, 1988, Federal Land Bank determined that perhaps we were entitled to the borrower's rights under the 1987 Act and formal debt restructure documents were served on us by Federal Land Bank. We then hired an appraiser to appraise the property and based on his appraisal, we submitted a formal debt restructure request with all the required documentation on November 23, 1988. The debt restructure documentation was completed and submitted without any assistance or input from Federal Land Bank regarding what the Federal Land Bank policies for debt restructure were. Unbeknown to us, Federal Land Bank had completed an appraisal of the property on November 10, 1988 which reflected a value for the full 100 acres as of October 22, 1988 of $469,000.00. We obtained a copy of the Federal Land Bank appraisal in March, 1989.

On December 22, 1988, we received a denial letter from Federal Land Bank respecting our restructure request which set forward two reasons for the denial, both of which are neither correct nor true. The first reason for denial was that the restructure proposal represented forty-one percent (41%) of the outstanding indebtedness. It was our understanding that the amount owing on a property had nothing to do with the property value and that the restruc-already sent in request for notice of default which was recorded on May 8, 1989. Attached hereto as Exhibit "D" is a copy of the notice of default. During the course of our meeting on May 8, 1989, Federal Land Bank officials informed us that they would give due consideration to our amended debt restructure request which fully complied with all debt restructure policies of Federal Land Bank inasmuch as we were not requesting Federal Land Bank to rewrite a loan for less than the appraisal amount nor were we requesting repayment schedules on a basis of anything other than the then Federal Land Bank market rate loans. The Federal Land Bank officials indicated that they would consider the amended debt restructure request but that they would require additional financial documentation from us.

The Federal Land Bank officials then informed us that they were going to go ahead and record a notice of default on all of our property but would continue working with us toward some agreeable debt restructure resolution during the pendency of the foreclosure. We informed the Federal Land Bank officials that we strenuously opposed any foreclosure proceedings on our property and that we believed that they were in violation of agreements made with our prior attorney, which led to our filing a motion to convert to a chapter 7 and that they were now in violation of our rights under the 1987 Act.

To date we have received no further meaningful communication from Federal Land Bank officials other than to state that they have now decided to make a new appraisal of the property because they believe the property value may have increased since the date of the November 1988 appraisal. In that regard on June 7, 1988, an in-house Federal Land Bank appraiser came to our property and reinspected the property and informed us that Federal Land Bank was in the process of appraising the property again.

Conclusion

It is our sincere belief that Federal Land Bank misled our attorney in convincing him to convert our chapter 12 proceeding to a chapter 7 proceeding, thereby depriving us of the right to seek confirmation of a chapter 12 plan pursuant to the debt restructure requirements under the 1987 Act.

We believe that Federal Land Bank had an obligation to inform us in writing of the pendency and passage of the 1987 Agricultural Credit Act and had we so been advised after January 6, 1988 then we would have allowed our chapter 12 proceeding to be converted to a chapter 7 proceeding on January 21, 1988.

Furthermore, we believe that Federal Land Bank has acted improperly in refusing to provide us with the debt restructure documentation until October 1988, then denying our debt restructure request and delaying the debt restructure process until May, 1989, at which time their simple response was to file a notice of default and commence foreclosure proceedings. We believe that Federal Land Bank owed us an obligation as a stockholder and a borrower and under the 1987 Credit Act, to invite us into their offices in October 1988 and assist us in preparation of our debt restructure request and properly advise us regarding the policies involved in debt restructure applications and the formulas used to determine whether a debt restructure request will be accepted or denied. To simply provide us with a debt restructure application and instruct us that we have to have the debt restructure application completed with all supporting financial documentation within a forty (40) day time period or face suspension of our 1987 Credit Act rights and/or foreclosure, without assisting us in any fashion, in effect deprives us of our 1987 Ag Credit Act rights in regard to debt restructure.

We believe that Federal Land Bank's conduct toward us has been outrageous. The debt restructure procedure that we have gone through has been nothing but a joke and that Federal Land Bank's current tactic of determining to file a foreclosure proceeding and simultaneously reappraise our property "because they believe property values are now increasing" is totally in bad faith and in contravention of the 1987 Ag Credit Act. Our debt restructure rights should have been implemented as of January 6, 1988 irrespective of the fact that we were in a chapter 12 proceeding with an unconfirmed plan. Delaying us until nearly November, 1988 to determine that we would be provided with formal debt restructure was a delaying tactic followed by Federal Land Bank because of their belief that Thompson vineyard prices are rapidly increasing in today's market.

We sincerely hope that our testimony and our input will assist and aid other Farm Credit System borrowers who have been placed in the same or a similar distressful situation that we currently find ourselves in.

Respectfully submitted,

Dated: June 12, 1989　　By: Leo Yarbrough
LEO YARBROUGH

Dated: June 12, 1989　　By: Joyce Yarbrough
JOYCE YARBROUGH

(V-Z/4)

MCGUGIN & RYDER
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
1410 SECURITY BANK BUILDING
FRESNO, CALIFORNIA 93721
(209) 264-8084

GIN (1908-1981)
RYDER
WALTER
AWRENCE B. KENKEL
AVANAGH

AREA CODE 209
TELEPHONE 264-8084

September 17, 1985

Copy

Ms. Ruth Daugherty
Vice President
Problem Loan Administration
BANK OF AMERICA N.T. & S.A.
1560 East Shaw Avenue
P.O. Box 1672
Fresno, CA 93717

Re: Leo and Joyce Yarbrough

Dear Ms. Daugherty:

This letter serves as a follow-up to the several discussions we have had of late concerning Mr. and Mrs. Yarbrough and their obligations to Bank of America and Federal Land Bank.

The purpose of this letter is to recite Mr. and Mrs. Yarbrough's understanding of the proposed financing arrangement between Bank of America, Federal Land Bank and themselves.

I have sent a copy of this letter to David Burchard of the Federal Land Bank so that lender will be fully aware of my clients' understanding and agreement.

The general concept of agreement is as follows:

1. Bank of America will advance $25,000.00 so the Yarbroughs can harvest and finish out the 1985 crops. This sum includes $2,500.00 for attorney fees owed to us, as well as the sums set forth below for other creditors. Bank of America shall have a security interest in 100% of the raisin diversion certificates issued in 1985 and 1986 to secure all sums owed to Bank of America.

	ACCOUNTS PAYABLE
$1,500.00	P.G. & E. (unpaid)
5,700.00	P.G. & E. (to end of year)
3,500.00	Irrigation taxes
2,300.00	Kiwi cultural costs
975.00	Tractor maintenance
1,650.00	Equipment repair
5,000.00	Kiwi harvest
675.00	License fees
550.00	Insurance (truck)
1,000.00	Deisel/Gas
800.00	SDI taxes
$23,650.00	

EXHIBIT A

2. Bank of America agrees to release the 1985 and 1986 kiwi gross proceeds to Federal Land Bank, and Federal Land Bank agrees to take those proceeds in lieu of the normal debt service and Federal Land Bank agrees not to record a notice of default earlier than the payment due date in 1987.

3. At present no chapter 11 proceeding needs to be filed. This makes the agreement easier to effectuate and less costly.

4. Bank of America commits to 1986 crop financing and agrees to advance up to around $39,000.00 which represents about 70% of the budgeted production proceeds. No more than 70% of the crop proceeds would be advanced.

5. Yarbroughs commit to going into the 1986 raisin diversion program, if there is one, and agree to list for sale the 60-acre parcel, on commercially reasonable terms.

6. Yarbroughs agree to bring current and keep current their obligation on their car.

This is a general summary of the agreement as understood by Mr. and Mrs. Yarbrough.

Assuming this is an accurate reflection of the Bank of America and Federal Land Bank agreement, please proceed to draw such documents as you deem necessary to effectuate this agreement. Mr. and Mrs. Yarbrough can then sign them at your office, unless they want us to review them first. The money can then be advanced.

I will be in Dallas until September 22, 1985. If any questions arise before I return, please contact Rob Fugal of this office.

Thank you, and Mr. Burchard, for your ongoing cooperation.

Very truly yours,

McGUGIN & RYDER

Riley C. Walter

RCW:amt
cc: Mr. David Burchard
Mr. and Mrs. Leo Yarbrough, Jr.

**Federal Land Bank Associations
of Fresno and Madera**

P.O. Box 4037, 1240 W. Olive Avenue
Fresno, California 93744
200/441-7894

P.O. Box 179, 309 North "I" Street
Madera, California 93637
209/573-9113

December 22, 1988

Leo L. Yarbrough, Jr.
Peggy Joyce Yarbrough
614 West Rose
Fresno, CA 93706

RE: Loan No. 237653-9

Dear Mr. & Mrs. Yarbrough:

Federal Land Bank Association of Fresno has reviewed your application for restructuring dated October 24, 1988. After carefully considering the application and the supporting documents and information, we regret to inform you that your application is not approved.

The principal reason for the denial is that we have determined that the potential cost to the Association of restructuring your loan under your proposed restructuring plan is greater than the potential cost to the Association of foreclosure. In making that determination, we have considered several factors, including but not limited to the following:

1. The loan amounts under your restructure proposal represent only 41% of your outstanding indebtedness, and are significantly lower than the appraisal value of the property.
2. Your past repayment history does not support your ability to reestablish a viable operation or to repay the loan on a restructure basis.

Under the Farm Credit Act of 1971, as amended, you have the right to a review of the decision to deny restructuring in person, before a credit review committee. You may be accompanied by counsel or any other representative of your choice. To obtain such a review, you must submit a written request to the association within ten (10) days of the date of this letter.

EXHIBIT B

Mr. & Mrs. Yarbrough
December 22, 1988
Page Two

You may submit to the credit review committee any documents or other evidence to support the information contained in your application which you believe will demonstrate that your restructuring proposal satisfies the credit standards of the association, as set forth in the Distressed Loan Restructuring Policy of the Sacramento Farm Credit District. Documents or evidence containing new information that was not mentioned in the application may not be submitted and will not be considered by the credit review committee in reviewing the decision on the application. The credit review committee will reach a decision on your application in its sole discretion and this decision will be the final decision of the association.

Notwithstanding the foregoing, you have the right under the Farm Credit Act of 1971, as amended, to have an independent appraisal by an accredited appraiser, at your expense, submitted to the credit review committee for their consideration. This right is conditional upon your selecting an appraiser from a list of appraisers furnished to you by the Association. Should you elect to have a review and to obtain an independent appraisal, please contact one of the appraisers on the enclosed list and make arrangements for the appraisal to be done in as expeditious a manner as possible.

When you send in your request for the review of your restructure denial, which request must be received in 10 days, please include the name of the appraiser you have selected and the date by which the appraisal will be completed so that we may schedule the review.

Very truly yours,

Sanford Davis by
Sanford Davis,
LSRD Team Leader

SD:jlp
Enclosure

The following list of appraisers is furnished to you in accordance with the Farm Credit Act of 1971, as amended. It is not to be construed by you as an endorsement or warranty of any kind of the persons or their work product. Any appraisal done by any appraiser on this list is exclusively his or her work product and the Federal Land Bank Association of Fresno and the Western Farm Credit Bank, formerly known as Federal Land Bank of Sacramento, take no responsibility for that work product. No investigation has been made to determine if the appraisers on this list have professional insurance. You are encouraged to independently verify the qualification, experience and work product of the appraisers before selecting any appraiser from this list.

David Dunshee
3855 N. West, Suite 110
Fresno, CA 93705
Phone (209) 222-1669

Steve C. File
1255 W. Shaw Ave., Suite 104
Fresno, CA 93711
Phone (209) 226-5022

Mark R. Moss
T. W. Patterson Building
2014 Tulare Street
Fresno, CA 93721
Phone (209) 486-6777

Michael J. Iliff
2550 W. Shaw Ave.
P.O. Box 9249
Fresno, CA 93791

Mark Massie
1042 E. Pico Avenue
Fresno, CA
Phone (209) 222-6340

A. George Zengel
5080 N. Fruit Ave.
Fresno, CA
Phone (209) 226-8152

APR 27 1989

Western Farm Credit Bank

3636 American River Drive 95864
P.O. Box 13106
Sacramento, California 95813-4106
916/485-6000

April 24, 1989

Mr. William L. Cowin, Esquire
Cowin and Hrdlicka
2150 Tulare Street
Fresno, CA 93721

Dear Mr. Cowin:

Leo Yarbrough - Fresno-Madera FLBA

On April 20, 1989 the Credit Review Committee met with you and your client to review and reconsider the denial of your clients recent loan restructure request. After our review and consideration of your presentation and other available information, the Committee voted to concur with the denial of your clients request. The principal reasons for the decision center on the reasons as pointed out in Sanford Davis's letter to your client dated December 22, 1988.

As we discussed during the meeting, we do encourage you to continue to work with the Association towards a timely resolution of this matter.

Sincerely,

Wayne E. Hiatt

Wayne E. Hiatt
Regional Vice President

WEH:mf

cc: Mark A. Hotvedt
Pat Pinkham

EXHIBIT C

RECORDING REQUESTED BY

AFTER RECORDING MAIL TO

U. S. TRUST DEED SERVICES, INC.
Post Office Box 276310
Sacramento, California 95827-6310

RECORDED ON MAY 8, 1989

THIS SPACE FOR RECORDER'S USE ONLY

TITLE ORDER NO. TRUSTEE SALE NO. 91457 Reference/Loan Number: 237653-9/YARBROUG

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

IMPORTANT NOTICE

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is $412,521.06 as of 04/26/89 and will increase until your account becomes current. You may not have to pay the entire unpaid portion of your account even though full payment was demanded, but you must pay amount stated above. CONDITION OF ACCEPTANCE OF REINSTATEMENT: All Senior Liens, Taxes, Assessments Insurance, Attorney's Fees & Court Costs must be proved current at the time of reinstatement.

However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the end of the three-month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of property or otherwise; (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any reason, contact:

Western Farm Credit Bank
c/o FRESNO-MADERA FEDERAL LAND BANK ASSOC.
1240 West Olive Avenue
Fresno, CA 93728

(209)441-7894

If you have any questions, you should contact a lawyer or the government agency which may have insured your loan.

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN That WESTERN FARM CREDIT BANK, formerly FEDERAL LAND BANK OF SACRAMENTO, a corporation, is now duly appointed Trustee under a Deed of Trust dated 01/10/83 executed by: LEO L. YARBROUGH, JR. and PEGGY JOYCE YARBROUGH, his wife,

as Trustor, to secure obligations in favor of: FEDERAL LAND BANK OF SACRAMENTO, a corporation

as beneficiary

Recorded on 02/09/83 as document no. 83010950 book --- page --- of Official Records in the office of the Recorder of Fresno County, California, describing the land therein as more fully described in said Deed of Trust, including 1 note(s) for the sum of $510,000.00 that the beneficial interest under said Deed of Trust and obligations secured thereby are presently held by the beneficiary. That a breach of, and default in, the obligation for which said Deed of Trust is security has occurred in that the payment has not been made of: Failure to pay the 01/01/85 installment of principal and/or interest and all subsequent installments, together with late charges, default interest and advances with interest thereon.

That by reason thereof, the present beneficiary under such Deed of Trust has executed and delivered to said Trustee, a written Declaration and Demand for Sale, and has deposited with said Trustee, such Deed of Trust and all the documents evidencing the obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

DATE: 05/04/89

WESTERN FARM CREDIT BANK, formerly
FEDERAL LAND BANK OF SACRAMENTO, Trustee
By: U. S. TRUST DEED SERVICES, INC., Agent
X By: Lisa Gaines
Lisa Gaines, Vice President

X________

EXHIBIT D

TESTIMONY OF DONALD AND PATRICIA JACKSON

January 12, 1989

Donald L. Jackson and Patricia V. Jackson
P. O. Box 126
Traver, California 93673
(209) 897-7506, 897-5034

Don Jackson Biographical Background

I, Don Jackson, joined the Marine Corps Reserve in 1957 and was a member for three and one-half years. I, graduated from Kingsburg High School in 1958. I took an agricultural curriculum during my high school years at Kingsburg and attended Fresno State College for one year specializing in agricultural vitaculture. Three generations of the Jackson Family have resided in the Kingsburg area. Kingsburg is a small agricultural community approximately 20 miles southeast of Fresno, California.

In 1959, I acquired a 60-acre farm parcel in Kingsburg, composed of vineyard and open ground and constructed a poultry operation on the open ground. In 1960, I mortgaged the 60-acre property and utilized the mortgage funds to acquire an 80-acre farm parcel in the Traver area which is approximately three miles south of Kingsburg.

Pat Jackson Biographical Background

I, Pat Jackson, graduated from Kingsburg High School in 1959 and attended Reedley Junior College one year and Fresno State College one year, marrying Don Jackson in 1960. I am a fourth generation resident of Kingsburg. My great grand parents are buried in the Kingsburg Cemetary. In 1961, Don and I acquired a commercial parcel on Highway 99 in the Traver area and constructed a restaurant, fruit stand and gift shop on the property and operated the facility until 1973, at which time we sold the facility which is still in operation and is known as the "Hitching Post". Don and I have had three children, Steve, born in 1962; Robert, born in 1964; and Julie, born in 1971. All three of our children have graduated from Kingsburg High School. Steve and Rob have now having completed college and Julie will be attending college this fall.

Joint Biographical Background

In 1965, we acquired a 100-acre parcel near Traver and constructed a large turkey operation and a large feed lot on the 100-acre property. In 1969, we acquired a 459-acre property in the Traver area and constructed additional turkey operations on the property and commenced developing the property into permanent crops such as vineyard and tree fruit. Between 1960 and 1981 we acquired and developed thousands of acres and were leasing 3,000 acres for row crop production. Many of the properties were developed and sold for huge profits which resulted in us having little to no debt on the farm properties we retained. For example, in 1970, we acquired an additional 570-acre property in the Traver area and commenced developing the property into vineyard and tree fruit. In 1977, we acquired a 3,000-acre property in Madera County paying $4 million for the property which we then sold in 1980 for $8 million.

By April 1981, we enjoyed a net financial statement in excess of Twenty-Five Million Dollars ($25,000,000.00) which was based on our ownership of 560 acres of vineyard, 350 acres of tree fruit, 3 turkey ranches (raising over 350,000 birds per year), a cattle feed lot operation (feeding over 2,000 head of cattle per year), 4,000 acres of row crop land on which we raised cotton, grain, vegetables, corn, silage and alfalfa. We also leased an additional 3,000 acres of row crop land. As of April 1981, we had a very small indebtedness against farm properties and we enjoyed an excellent net cash flow from the farming operations we had established over the past 22 years through lots of hard work.

The Federal Land Bank Background

In April 1981, we entered into an extensive fiduciary relationship with Federal Land Bank of Kingsburg (with whom we had been a borrower for nearly ten years) and Federal Land Bank of Visalia, by virtue of becoming borrowers for approximately ten million dollars ($10,000,000.00) of new financing. The purpose of the new financing was to acquire 10,700 acres of a farming operation comprising a total of 33,000 acres, located in Kings and Tulare Counties, and commonly refered to as "Southlake Farms" (Liberty Ranch - 22,451 acres, White Ranch - 10,553 acres). The Kingsburg Land Bank office provided us with $3,500,000.00 which was secured by all our properties and Federal Land Bank of Visalia was to provide us with $5,500,000.00 which would be secured by the 10,700 acres we were acquiring for $10,500,000.00.

The purchase price for the 33,000 acres, including land, equipment and growing crops was $45,000,000.00. Federal Land Bank had issued a $32,500,000.00 loan commitment to the party who had the 33,000 acres in escrow. It was our understanding that Federal

Land Bank intended to close the transaction on April 16, 1981 on the $32,500,000.00 loan and that after escrow closed, our portion of the loan, $5,500,000.00, would be segregated out and that our 10,700 acres would only be encumbered by the $5,500,000.00 we owed for the balance of our purchase price.

The financial arrangements being made with Federal Land Bank Association of Visalia were handled by Phil Wright who was the Manager of Federal Land Bank Association of Visalia. We had been studying the Ranch with plans to acquire it since September, 1980. We were approached on April 1, 1981 by the Buyer who offered us 10,700 acres of the Ranch for $10,500.00, with us paying $5,700,000. cash down. Prior to close of escrow, April 16, 1981, we personally met with Phil Wright and demanded and were then assured that we would receive separate title, a separate Note, and a separate deed of trust for our 10,700 acres after escrow closed. Phil Wright assured us that the financing and title matters could and would be segregated immediately after escrow closed but this could not be accomplished prior to April 16, 1981 because extensive water easement work had to be completed before the Ranch could be divided up.

Prior to close of escrow, April 16, 1981, we were advised by Federal Land Bank that inasmuch as one party had previously been qualified as a single purchaser and the loan commitment had been issued for only one loan on the property then it would be necessary to redo all the loan documentation. Due to the required escrow closing date, (April 16, 1981), and the fact that additional water easement work would have to be completed to accommodate three separate ownerships of the Southlake Farms property, it would be impossible to accomplish a separate loan on such short notice. We were promised that Federal Land Bank would commence segregation of the loan immediately after escrow was closed and that in the event that we demanded that our loan be segregated prior to escrow being closed, then the transaction would most definitely fail because the seller was refusing to extend the escrow closing beyond April 16, 1981.

As a temporary measure until the Federal Land Bank loan could be segregated, we agreed that a trust would be established under which the Buyers of the 33,000 acres would pay their proportionate shares of the Federal Land Bank indebtedness.

As of the closing of escrow April 16, 1981, and based on the purchase price of the our portion of the Southlake Farms property, plus our portion of the stock, loan fees, and our fifty percent (50%) portion of a $2,500,000.00 tiling reserve and after deduction for the $5,700,000.00 cash down payment funds advanced by us, we were to have been in debt approximately $7,000,000.00 for our 10,500 acre portion of the Southlake Farms Ranch property, or $676.00 per acre.

In October, 1981, Phil Wright died in a clamming accident at Pismo Beach, California. After learning of Mr. Wright's death, we attended a meeting with Federal Land Bank of Visalia with Joe Akkerman, Phil Wright's successor. Mr. Akkerman renewed and ratified the agreement made by Mr. Wright wherein our loan would in fact be segregated and he excused the long delay in accomplishing the loan segregation on the basis that the water easement work was taking longer than anticipated.

The first annual payment on the full $32,500,000.00 debt to Federal Land Bank of Visalia came due April 15, 1982 and the other two Buyers defaulted by not depositing with the trust their portion of the annual payment. However, we timely deposited our portion of the annual payment with the Trust. This resulted in the whole $32,500,000.00 loan going into default. By the fall of 1982 it became obvious that Federal Land Bank was going to delay any segregation of the loan while the loan was in a default status.

The party who had been approved as a borrower for a $32,500,000.00 loan in April, 1981 filed a Chapter 11 bankruptcy proceeding in December 1982. Based on the status of the bankruptcy proceeding, it became obvious that we were on the verge of losing our total investment into our 10,700 acres and all our Kingsburg and Traver properties were at risk. In early 1983 Federal Land Bank became adamant that it would not segregate the loan and refused to proceed with foreclosure only against the defaulting parties and instead proceeded with foreclosure against the entire 33,000 acres, 22,000 acres of which we had no interest in.

At the threat of losing our 10,700 acres and our investment into our properties and under great coercion, we agreed to exercise our right under the trust agreement to foreclose on the original Buyer's 10,700 acre parcel part of the Liberty Ranch.

To reinstate the loan and then segregate the loan between ourself and the Buyer (of the White Ranch portion of the original Southlake Farms property) Federal Land Bank required that we pay the entire 1982 annual payment, various penalties, new loan fees, new stock, and then the loan would be rewritten as of June, 1983 with us finally having a separate loan on the 21,000 acres we would now own (the Liberty Ranch). Federal Land Bank added $1,456,000.00 in loan fees, plus delay interest, and additional stock and loan charges such that effective June 6, 1983, our

Federal Land Bank indebted ness on the Liberty Ranch property increased from approximately $7,000,000.00 for 10,700 acres to $24,275,000.00 for 21,000 acres.

In order to raise the capital necessary to bring the Federal Land Bank indebtedness current and pay the additional fees and costs associated with rewriting the loan, we had to liquidate some of the farm properties we had owned for many years in the Kingsburg and Traver areas and further deplete our savings and cash reserves. In October 1984 we were forced into a Chapter 11 bankruptcy proceeding by Federal Land Bank Association of Kingsburg which had commenced foreclosure proceedings on our Kingsburg and Traver properties which had been given as security for the original down payment money in April, 1981 for the Liberty Ranch. We now know we were improperly advised to file a bankruptcy. We should have sued Federal Land Bank for recission of the whole transaction and reverted to our pre-April 1981 status of ownership.

We continued to farm the Kingsburg and Traver area properties along with the 21,000 acre Liberty Ranch property as a debtor-in-possession in Chapter 11. However, in March 1985, Federal Land Bank Association of Kingsburg was successful in obtaining relief from stay and foreclosed on the Kingsburg and Traver area farm properties, thereby making us forfeit all our farming costs to date towards the 1985 crops along with all of the Kingsburg and Traver area properties, including our family residence. On December 27, 1985, Federal Land Bank of Visalia wrote to us regarding the prospect of our leasing the 21,000 acre Liberty Ranch property for crop year 1986 in the event Federal Land Bank of Visalia completed a foreclosure.

At no time during the course of 1985, including the negotiations regarding the lease in December 1985 and January 1986 or through the completion of foreclosure and recordation of the trustee's deeds on the Liberty Ranch in February and March of 1986, did any officers of Federal Land Bank inform us that Congress was considering the passage and, in fact, in December 1985, did pass various farmer relief legislation, (i.e. 1985 Amendment to Farm Credit Act of 1971). At no time after the Agricultural Credit Act was amended in December 1985 did officials with any of the Federal Land Bank Associations make any efforts to inform us of the passage of the Amendment to the Act, which we understand mandated debt restructure procedures for distressed farms such as ourselves. The December 1985 Amendment to the Act created the prospect of restructure for our indebtedness to Federal Land Bank of Visalia in accordance with the 1985 Act.

We made every effort to avoid filing a bankruptcy proceeding and to avoid losing 25 years of hard work. Those efforts were directed at liquidating some of the Kingsburg and Traver area farm properties with the intent that proceeds from the sale of said properties would be utilized to cure deficiencies with Federal Land Bank As an example, we had a 100 acre parcel commonly known as the Bare Ranch, with a three-quarter (3/4) mile rail frontage committed for a sale at $10,500.00 per acre. However, Federal Land Bank Association of Kingsburg refused to cooperate in the sale of the property, and after foreclosing us off the property they entered into a sale of the property for only $3,000.00 per acre. Currently, the largest feed mill west of the Mississippi River is being con structed on that 100-acre property. Federal Land Bank Association of Kingsburg also would not cooperate in our efforts to sell a 160 acre vineyard property at $9,000.00 per acre and a young, unstaked 80 acre vineyard property at $4,500.00 per acre. We are informed that after the foreclosure proceeding, Federal Land Bank Association of Kingsburg incurred the expenses of staking and wiring the 80 acre young vineyard and then sold both parcels of vineyard for only $6,000.00 per acre with a ten percent (10%) down payment and six percent (6%) financing to an investor group from Houston, Texas.

The two Federal Land Bank Associations of Kingsburg and Visalia, working in concert, were successful in depriving us of using our equity in the Traver and Kingsburg properties to cure deficiencies on the overall Federal Land Bank indebtedness. Simultaneously the Federal Land Bank Associations of Kingsburg and Visalia were successful in thwarting our reorganization efforts in the Chapter 11 proceeding. This resulted in our ultimately having to convert to a Chapter 7 proceeding in April, 1986 and losing a lifetime of work and effort. In December 1985, we were the holders of $1,800,000.00 shares of Land Bank stock and were members and stockholders of Federal Land Bank with all the rights attendant thereto. However, even though Federal Land Bank was communicating with us in December 1985 regarding a lease of our foreclosed on properties for crop year 1986, we were never informed by Federal Land Bank officials of the passage of the December 1985 Amendment to the Agricultural Credit Act. Had we known of the Amendment, we would have petitioned the Bankruptcy Court to maintain the automatic stay and attempted debt restructure, as part of a plan for reorganization.

In February and March, 1986, Federal Land Bank Association of Visalia recorded trustee's deeds after having completed a foreclosure proceeding against our 21,000-acre Liberty Ranch property. However, prior to the January 17, 1986 foreclosure, we proposed to rent the 21,000-acre Liberty Ranch. Federal Land Bank Association of Visalia agreed to the lease and accordingly, we remained in continuous possession of the farm property even though we had been foreclosed off in January, 1986. Irrespective of the foreclosures, loss of property and Federal Land Bank's broken promises, Federal Land Bank and we were in a fairly amiable relationship throughout crop year 1986. We perceived that our best prospect of getting a fresh start was in utilizing our knowledge and farming skills on the Liberty Ranch as a lessee and this dictated that we "overlook the past" and attempt to reconcile and be amiable with Federal Land Bank.

For crop year 1987, we again offered to lease the Liberty Ranch (21,000 acres) this time for $600,000.00 cash, ($27.00 per acre) and in support of the lease proposal, presented an approved operating budget which included the cash rent to Federal Land Bank Association of Visalia. However, Federal Land Bank of Visalia and Federal Land Bank of Sacramento refused to lease the property to us without explanation for the refusal, and instead leased the property to a Visalia area resident for crop years 1987 and 1988 for an effective rental amount of only $300,000.00, or 1/2 of that offered by us. Additionally, under the lease terms withthe new lessee, Federal Land Bank was to pay for substantial maintenance costs and improvements that we would have been paying under our lease proposal. It became obvious in early 1987 that Federal Land Bank was willing to accept substantially less in rental revenues for the property in order to avoid leasing the property to us.

For crop year 1987, the new Lessee subleased approximately 9,000 acres of the 21,000 acre Liberty Ranch to us and other Jackson Family members for the same amount per acre as we had previously offered to rent the entire property from Federal Land Bank of Visalia, and.he made a tidy profit. We performed custom work on the remaining 12,000 acres and were, in effect, still in possession of the entire property.

Prior to commencement of crop year 1988 we were informed by the new Lessee that Federal Land Bank Association instructed him that in the event he subleased any of the property to us for crop year 1988 that his future lease rights would be jeopardized and that Federal Land Bank had made it clear to him that Federal Land Bank wanted us to be denied possession of any portion of the 21,000-acre Liberty Ranch for crop year 1988. We now believe that the primary reason for the Federal Land Bank Association's refusal to lease the Liberty Ranch to us for crop year 1987 and in turn entering into a lease for the property to a different party for what amounts to a cash loss in excess of $500,000.00, coupled with demanding that we be denied the opportunity to sublet any of the Liberty Ranch for crop year 1988 was because Federal Land Bank was fully aware of the prospect of the passage of federal legislation assisting farmers nationwide in situations similar to ours. Evidently Federal Land Bank perceived our presence on the Liberty Ranch to be a potential problem for marketing the property free of our interests. We believe that Federal Land Bank's demand that the new Lessee not sublease any portion of the Liberty Ranch to us during crop year 1988, was because of the pendency and passage of the Agricultural Credit Act of 1987 and the borrower's rights included therein.

In December, 1987, we became aware of the passage of the Agricultural Credit Act of 1987, and we immediately contacted Federal Land Bank of Visalia in early January 1988 and directly inquired respecting our right to lease and/or repurchase the Liberty Ranch and any of the Kingsburg and Traver area properties we formerly owned and had been foreclosed off. We were told during the early January 1988 meeting with Federal Land Bank of Visalia that the 1987 Act did not apply to us because we had been foreclosed off our property prior to January 6, 1988, (the effective date of the Act). We were also told that the property was already leased for crop years 1988, which is set forth below proved to be a lie. We believe that the January 1988 representations made to us by officials at Federal Land Bank of Visalia are best exemplified by correspondence from George Hickman, then President of Federal Land Bank of Sacramento, to all the Land Bank and Production Credit Associations in the Sacramento District (See Exhibit "A"). Mr. Hickman's letter makes it abundantly clear that prior to his correspondence, the 1987 Agricultural Credit Act was being ignored by those responsible for administering it to former borrowers such as ourselves. We then sought advice from new legal counsel respecting our borrower's rights under the 1987 Act.

Pre-Litigation Contacts with Federal Land Bank

In early March 1988, our counsel served written notice on Federal Land Bank Association of Visalia of our demand to exercise our right to lease the farm property and/or, in the alternative, to exercise our right to repurchase the property under the rights of first refusal afforded under the Agricultural Credit Act of 1987.

On March 21, 1988, and March 23, 1988, our counsel received correspondence from George Hickman and from Federal Land Bank Association of Visalia, which set forward the reasons why the Liberty Ranch had not been offered to us for lease or for acquisition, the primary reason being that at the time the 1987 Agricultural Credit Act went into effect, January 6, 1988, that the

Liberty Ranch was subject to a binding sales contract. However, Federal Land Bank did indicate that if the binding sale fell through that we may be afforded all our rights under the Act even though Federal Land Bank was not legally obligated to extend those rights to us. Unbeknown to us, Federal Land Bank had in fact cancelled its lease on the property with the new Lessee in the Fall of 1987 and did not enter into a new lease, with the same tenant, until February 19, 1988, without ever offering to lease our property to us.

After receiving the March Federal Land Bank correspondence, we had various personal meetings with Federal Land Bank officials and commenced correspondence directly between ourselves and officials with Federal Land Bank Association of Visalia. We believed that our interests would be better served by having direct contact with Federal Land Bank as opposed to contact through attorneys. Every correspondence by ourselves to Federal Land Bank included a request for formal meetings with top Federal Land Bank officials in order that our rights under the 1987 Agricultural Credit Act could be explained to us by the people who were supposed to be administering the Act. On April 28, 1988, Federal Land Bank of Visalia corresponded directly with Don Jackson only and although they still maintained that the 1987 Act did not apply to us, that nevertheless, in the "spirit of the law", they were proposing to sell the Liberty Ranch to us at "the appraised market value price", which was represented to be $12,000,000.00. We were shocked at the price the Ranch was offered to us for because we were aware, and it was common knowledge, that Federal Land Bank had been offering the property to various parties over a period of several months for approximately $7,200,000.00. The offer went on to state that if we offered a price less than the $12,000,000.00 that Federal Land Bank could then sell it for less than $12,000,000.00 to third parties without an obligation to re-offer the property to us.

We recognized that the "bogus offer" from Federal Land Bank was a technical trap orientated at getting us to respond with a price in line with true market value and then Federal Land Bank would be in a position to circumvent our right to purchase by simply selling to the third party they were then negotiating with. Accordingly, on May 27, 1988, we communicated our acceptance of the offer to purchase by agreeing to pay the appraised fair market value as established by an appraisal made by an accredited appraiser of the property which we were willing to pay for. In our May 27, 1988 correspondence we notified Federal Land Bank respecting our "acceptance" to repurchase and our intention to either lease the property or repurchase the property with the consideration to be paid based on the current market value based on a true appraisal. In our May 27, 1988 correspondence to Federal Land Bank, we also informed Federal Land Bank Association of Visalia that we had been informed by reliable sources that Federal Land Bank Association of Visalia had been offering and negotiating to sell the property to other parties for approximately $7,200,000.

After we submitted our acceptance to repurchase the property as set forward in our May 27, 1988, letter to Federal Land Bank Association of Visalia, Federal Land Bank responded in writing on June 3, 1988, stating that we had extinguished our repurchase rights because, (a) we had refused to pay the purchase price that Federal Land Bank had offered the property to us for, and (b) that we had proposed to pay an alternative price based on a current market value appraisal as opposed to setting forth an exact price for the property.

After receiving the June 3, 1988 Federal Land Bank letter, we continued to have verbal communications with the officials at Federal Land Bank of Visalia. We were told that Federal Land Bank was never legally obligated to offer the ranch to us in the first place and that borrowers such as ourselves, had no "right of private action" to bring litigation against Federal Land Bank in regard to our borrower's rights under the 1987 Act.

We informed Federal Land Bank that their conduct amounted to unlawful discriminatory practices under the 1987 Act and we demanded they cease and desist their efforts directed at selling the property to other parties without first affording us the same opportunity to purchase the property at the prices that it had been offered to other parties for since year-end 1987. We reasoned that under the provisions of the 1987 Act that the Defendants had in fact "first elected" to sell the property on January 6, 1988, as evidenced by the fact that prior to offering it to us, they had entered into the "alleged" binding sale agreements for the property referenced in the correspondence from Federal Land Bank. Since the 1987 Act requires the borrower to be notified within 15 days of when Federal Land Bank "first elects to sell" the property, and the property is to be offered at the fair market vaLue as established by an accredited appraiser, we therefore, demanded to know the details of the other "sales" and why the property had not been offered to us to lease or purchase within the 15 day provision of the 1987 Act. We believe that it is logical that the price the property was being offered to the general public for and was in escrow to be sold for, should constitute the "fair market value" referenced in the Act. Accordingly, offering the property to us for $12,000,000.00 and to third parties for $7,100,000.00, was an obvious attempt by Federal Land Bank to circumvent our borrower's rights. We set forward our objections to Federal Land Bank's June 3, 1988 letter in an August 24, 1988 letter to Federal Land Bank in which we threatened to bring litigation.

On September 2, 1988, Federal Land Bank of Visalia responded to our August 24, 1988 letter by acknowledging the interim conversations with us and again reiterated their position that we had no individual rights to litigate over the alleged violations of our rights under the 1987 Act by Federal Land Bank. For the first time, Federal Land Bank expressed an interest in a formal meeting with us and our attorney. We had been requesting a formal joint meeting since March 10, 1988 and had been continually informed by Federal Land Bank since January, 1988, that a formal meeting was pointless.

A formal meeting between Don, our attorney, the original purchaser of the White Ranch portion of the Southlake Farms property, and Federal Land Bank officials from Federal Land Bank Association of Visalia and the Western Farm Credit Bank, including their in-house counsel, was then held in our attorney's office.

During the course of the September 21, 1988 meeting, Federal Land Bank admitted that both prior to and after the April 28, 1988 letter referenced above, that the property was being offered, negotiated, and in escrow with third parties for a $7,200,000.00 effective sales price. Federal Land Bank refused to disclose the principals, the terms of the proposed sales, and would not release the alleged appraisal referenced in the April 28, 1988 letter to Don. We made it abundantly clear that we intended to get our ranch back and that it was unlawful and unfair to offer the Ranch to us for $12,000,000.00 and simultaneously offer it to third parties for $7,200,000.00. At the conclusion of the meeting, one of the Federal Land Bank officials unequivocably stated as follows: "Gentlemen, I'm looking you in the eye, man-to-man, and I'm promising you that in the event the current buyers breach their purchase agreement, the property will be offered to you again and it will be offered to you at the same price as we are attempting to sell it for now." The White Ranch and Liberty Ranch were in escrow at the time for $12,000,000 for the entire 33,000 acres and since the White Ranch had historically been appraised at a twenty percent (20%) higher value per had historically been appraised at a twenty percent (20%) higher value per acre than the Liberty Ranch the effective price for our Liberty Ranch was $7,200,000.00. This was an interesting promise to make in light of the fact that we later discovered that the proposed Buyers had already breached their purchase agreement on September 12, 1988 by not providing a financing commitment as required under their purchase agreement. So in effect, as of the September 21, 1988 meeting, there in effect was no binding sales agreement at all and we were being lied to again.

Immediately after the September 21, 1988 meeting in Fresno, our attorney received coercive and threatening letters from in-house counsel for Federal Land Bank along with independent counsel retained by Federal Land Bank threatening to bring actions against our attorney individually, along with us, if we took any legal action directed at forcing Federal Land Bank to allow us to exercise our rights under the Agricultural Credit Act of 1987. Our attorney responded by correspondence dated October 4, 1988, indicating that we fully intended to address our rights in a court of law if necessary.

In October, 1988, we learned from reliable sources that the "supposed Buyers" of our Liberty Ranch had in fact cancelled their transaction. We then assumed that Federal Land Bank would honor the promises made during the September 21, 1988 meeting and that the property would be reoffered to us for a price in-line with true market values as required by the Agricultural Credit Act and in line with what Federal Land Bank was attempting to sell the property for to other parties. This belief was reinforced when we were contacted by various parties who had been subleasing parts of the Southlake Farms properties and said parties informed us that Federal Land Bank of Visalia had referred them to us respecting any leases for crop year 1989. In fact, we had personal meetings with the prospective tenants in November 1988 regarding possible leases with them and we began making preparations for either a purchase and/or lease of the Liberty Ranch. In early 1988 we had made arrangements with a lender for the funds necessary to make a cash purchase of the Liberty Ranch and we renewed those financial accommodations in November, 1988 in anticipation of repurchasing our property.

In early December 1988 we were informed by reliable sources that Federal Land Bank was once again negotiating for a sale of the property with another Buyer. Infuriated and completely frustrated over the course of events since January 1988 respecting our "borrower's rights" under applicable provisions in the 1987 Act, we determined that litigation appeared to be the only avenue available to us. We realized that commencing in January 1988 to October 1988 and after having numerous informal meetings, one formal meeting and numerous phone conversations, and 11 letters between the parties, all of which referenced our demand to repurchase the Liberty Ranch, that the sad fact was we had not made any headway by attempting to resolve our right to reacquire our property amiably. Accordingly, on December 12, 1988 we filed litigation in the Federal Court in Fresno, California.

The Litigation Against Federal Land Bank

On December 12, 1988, we filed litigation against Farm Credit Administration, Federal Land Bank of Visalia, Federal Land Bank of Sacramento, Western Farm Credit Bank, et al., and simultaneously recorded a lis pendens against the Liberty Ranch in order to assure that the property would not be sold until such time as our rights to reacquire the property under the 1987 Agricultural Credit Act were determined by Court. Federal Land Bank had the entire 33,000 acre Southlake Farms property in escrow for $12,000,000.00 as of December, 1988. After commencement of our suit, Federal Land Bank segregated the sale and closed the White Ranch portion of the sale (10,553 acres) for approximately $4,800,000.00, thereby establishing the sale value of our Liberty Ranch at $7,200,000.00.

Since commencement of the litigation, we have discovered numerous facts which have simply astounded us. For example, we discovered that Federal Land Bank was fully aware at the time the original $32,500,000 loan commitment was issued to the borrower April 1981, who was supposedly purchasing the entire 33,000-acre Southlake Farms property, that said borrower was tremendously financially impaired and not capable of raising the balance of the cash needed to complete the $45,000,000 purchase price for the property. In fact, the original borrower was advised by Federal Land Bank to seek other parties as "investors" to come in with cash and assist in closing the transaction. In fact, we were contacted on April 1, 1981, and one-half of the Liberty Ranch was offered to us evidently for the specific purpose of having us come into the transaction for purposes of adding financial strength and the necessary cash in order that the transaction could be closed on April 16, 1981.

Obviously, had we known the true financial condition of the original borrower and the fact that he was not capable of making his part of the payments, we would have either insisted that we have a separate loan prior to the transaction closing or we would not have participated in the transaction at all.

We have also discovered since institution of the litigation that Federal Land Bank had in fact terminated in writing, its lease on the 21,000-acre Liberty Ranch (our property) in late 1987 and did not enter into a new lease until February 19, 1988, while simultaneously representing to us in early January 1988 that they could not lease the property to us for crop year 1988 inasmuch as they were in a binding lease agreement already and that Congress did not intend for Federal Land Bank to breach its agreements with third parties. We assumed in January, 1988 that the representations made by Federal Land Bank in regard to the lease for crop year 1988 was true inasmuch as they did have the property leased for crop year 1987 to that same party and it had been our understanding that the lease was a two-year lease for crop years 1987 and 1988. We did not find out until a later date that while the lease stated that it was for a two-year time period, it was, in fact, cancellable by Federal Land Bank in the event a new lease amount for the second year was not negotiated prior to September 1 of 1987 and was cancellable at any time by Federal Land Bank in the event of a proposed sale of the property. In fact, Federal Land Bank in writing did cancel the lease and, accordingly, as of January 6, 1988, there was no lease for the Liberty Ranch. Therefore, the property should have been offered to us for a lease for crop year 1988.

Our complaint also seeks a finding of negligence on the part of Farm Credit Administration for not adequately promulating rules and regulations under which Farm Credit System can adequately be supervised for purposes of assuring that parties such as ourselves, borrower's rights under the Agricultural Credit Act of 1987 are not violated. The thrust of our complaint is to recover title and possession of our remaining farm properties that have not previously been sold by virtue of the Court ordering that Federal Land Bank comply with the Agricultural Credit Act of 1987 and fairly offer our property to us in accordance with the 1987 Act. Finally, our complaint seeks monetary damages against Federal Land Bank for defamation and interference with our contracts and prospective business advantages in regard to subleasing our properties and doing custom farm work on those properties for others.

It seems incredible to us that in April 1981 we were in the position of owning thousands of acres of farmland, poultry ranches, and cattle feeding operations with a nominal indebtedness on that property with a provable net financial statement in excess of $25 million and by January 1986, we had been divested of all of our property, equipment, including our home and subjected to having to go through a Chapter 7 proceeding, all of which is based on the fraudulent conduct of Federal Land Bank, from April, 1981 through January 7, 1986. After losing a lifetime of work and being subjected to a Chapter 7 bankruptcy from which we were divested of all our worldly belongings except for statutory exemptions, that Federal Land Bank continues to humiliate and mistreat us by its underhanded and dishonest manipulations of our borrower's rights under the 1987 Agricultural Credit Act is incredible. We can think of no logical or sensible reason for Federal Land Bank to treat us in this fashion and we would submit that it cannot possibly be because we are poor farmers and/or poor business people inasmuch as we started out with nothing in 1958 and by 1981 had successfully become the owners of the businesses and properties referenced above with a very nominal indebtedness against those properties. We have always been hardworking and good farmers and good business people and our only mistake was in trusting Federal Land Bank in regard to the April, 1981 transactions respecting Southlake Farms.

The fact is Federal Land Bank made a mistake in 1981 by making a $32,500,000 commitment to a non-credit worthy individual and we made a mistake in trusting Federal Land Bank's judgment and trusting that Federal Land Bank would follow through with its promises to segregate our indebtedness on the Liberty Ranch. If land values had stayed constant and the prices received by farmers for their products had remained high, then undoubtedly Federal Land Bank would have received full payment on its original $32,500,000. loan. However, some of those events were not controllable by any of us and we all ended up suffering for our mistakes, misguided trust and lack of business judgment as the case may be. In effect, Federal Land Bank to date has taken close to a $50 million loss on the Southlake Farms transactionss We have lost over $25 million on those transactions but we have become the scapegoat for Land Bank's loss, which is totally unfair and, based on becoming that scapegoat, Federal Land Bank has turned its back on promoting, effectuating and assuring that the borrower's rights of the 1987 Act are equally applied to ourselves. Federal Land Bank officials have in fact stated to members of our community that they will do whatever is necessary to assure that we do not regain possession of any of our foreclosed on properties.

The degree of vindictiveness on the part of Federal Land Bank towards ourselves can best be exemplified by the fact that rather than lease the property to us for crop year 1989, Federal Land Bank elected to farm the property themselves and have deposited with the Federal Court affidavits swearing that by virtue of farming the property themselves, and instead of leasing the property, that they will lose nearly $1 million for crop year 1989 as opposed to making money for either leasing the property to us and/or selling the property to us as mandated by Congress. Since commencement of the litigation, we have made approaches to Federal Land Bank for a sensible, logical and amiable resolution of our case and our situation, all of which has been rebuffed by Federal Land Bank who irrespective of the cost and legal fees and loss of revenues has elected to pursue its vindictive course of action orientated at burying us with a miriad of legal pleadings in an effort to dispose of our case through procedural technicalities and avoid having the case heard in a trial on the merits.

Federal Land Bank has hired a large law firm in San Francisco to oppose our litigation. To date, that law firm has filed in excess of 40 pounds of pleadings in an effort to have our case dismissed and/or portions of our case stricken. The initial motions brought by Federal Land Bank's attorneys were heard in March 1989. The thrust of their arguments was that we had "No Right of Private Action" under the 1987 Ag Credit Act to maintain a lawsuit. On May 9, 1989, the the court ruled that our causes of action relating to the foreclosures of all of our properties were time barred based on expiration of statutes of limitation and in effect limited our case to those events occurring after January 1986. The Court further ordered that we did have a right of private action to litigate over our borrower's rights. However, our right of private action is totally dependent on the Ninth Circuit's ruling in the Harper case, which now stands submitted, awaiting a ruling. The Court further ordered that Federal Land Banks and Production Credit Associations are, in fact, private institutions that can sue and be sued and are not entitled to any tort immunities similar to federal chartered savings and loan institutions. Finally, the Court ordered that our lis pendens would remain of record provided that we post a $500,000 cash undertaking. To date, we have posted the $500,000.00 cash undertaking and have filed an amended complaint against only Farm Credit Administration, Western Farm Credit Bank, Federal Land Bank of Sacramento and Federal Land Bank of Visalia. Our complaint alleges breaches of our borrowers' rights under the 1987 Agricultural Credit Act for failure of Federal Land Bank to lease the property to us for crop year 1988 and crop year 1989 and for failure of Federal Land Bank to properly offer our property to us for repurchase in accordance with the provisions under the Agricultural Credit Act of 1987.

Since commencement of the case and as late as May 15, 1989, we have made proposals for an amiable resolution of our case and those efforts and proposals have not been responded to. In fact, counsel for Federal Land Bank informed our attorney in writing that we should not attempt to contact Federal Land Bank officials in the future for purposes of discussion because our calls would not be answered. In an effort to curtail the litigation, we filed a complaint and request for investigation with the proper Farm Credit Administration officials early in the year and after six weeks, all we received was a request for more information (see Exhibit "B"). Obviously, handling our grievances with Federal Land Bank in regard to our 1987 Act borrower's rights through the Farm Credit Administration 's administrative process is a joke. Without a right of private action to sue and enforce our rights, we would have no rights at all.

In closing, we sincerely hope that our offer of testimony will be of assistance to other farm families, both small operators and big operators, and we hope that Congress will take some action to eliminate the distress and anguish that Farm Credit System is causing farm families such as ourselves across the nation by virtue of its vindictive, malicious, arbitrary and capricious administration of the 1987 Agricultural Credit Act and its use of the court process as a whip to keep us in control.

Respectfully submitted,

Date: June 12, 1989.

By: Donald L. Jackson
DONALD L. JACKSON

Date: June 12, 1989

By: Patricia V. Jackson
PATRICIA V. JACKSON

FARM CREDIT BANKS OF SACRAMENTO
Sacramento, California

DATE: February 2, 1988

TO: All Federal Land Bank Association Chairmen and Presidents
All Production Credit Association Chairmen and Presidents

FROM: George W. Hickman

SUBJECT: AGRICULTURAL CREDIT ACT OF 1987 - BORROWER RIGHTS

Some of you have questioned the need to extend the borrower rights provisions of the above Act to loans already in foreclosure and to previous owners of acquired property in inventory as of the effective date of the Act. While the wording in the Act is a little vague on this point, the intent of Congress is not.

At the Farm Credit Council Annual Meeting in Washington, D.C. last week, we were addressed by two members of Congress, David Boren, chairman of the Senate Subcommittee on Agricultural Credit, and Thad Cochran, member of the Senate Agricultural Committee. Their remarks clearly indicate that they expect the Farm Credit System to take a liberal interpretation of the law when applying borrower rights. We were told that if we did not take this position that we could expect oversight hearings from Congress. Frank Naylor in his address accused the System of using a very narrow interpretation of the law and not extending these rights to those loans in process of foreclosure at the time of enactment, contrary to the spirit of the law. He said that if we continued to take this course that we would incur both lawsuits and the wrath of Congress. We heard from a number of Congressional aides who played a major roll in writing the bill, and they also expressed concern over the System taking a too restrictive interpretation of the borrower rights provisions.

Our distict board at its meeting on January 25, 1988, approved policies for this district that extend the right of first refusal and loan restructuring to acquired property and loans in the process of foreclosure, respectively, in process at January 6, 1988. These policies are in conformity with the intent of Congress and the association boards of directors and presidents should ensure that these policies are fully implemented. The district policies and philosophy must be understood and carried out by your staff. To do otherwise will invite lawsuits and a Congressional investigation.

For your information, I am enclosing a copy of resolutions that were amended and passed by the Farm Credit Council Delegate Body in Washington, D.C., on January 26, 1988.

President

EXHIBIT A

Farm Credit Administration

1501 Farm Credit Drive
McLean, Virginia 22102-5090
(703) 883-4000

February 17, 1989

William L. Cowin, Esq.
Cowin & Hrdlicka
2150 Tulare St.
Fresno, California 93921

Re: Jackson v. FCCA, et al.

Dear Mr. Cowin:

We are in receipt of your letter dated January 26, 1989 addressed to Anne E. Dewey, General Counsel of the Farm Credit Administration requesting examination and investigation of certain violations. Since it is not clear from the Complaint which borrower's rights regulations you feel were violated, please forward the following information to us pursuant to your offer to provide further written information and documents.

As to each violation:

1. The specific regulation which was violated;
2. The loan number, date of loan, amount, name of borrower and name of Farm Credit institution for each violation;
3. The specific facts which you contend create each violation with dates and names of each entity or person involved;
4. Documents supporting each violation.

If you require further explanation, please contact me at (703) 883-4020.

Sincerely,

Victor A. Cohen
Senior Attorney

EXHIBIT B

LAW OFFICE
OF
COWIN & HRDLICKA
AN ASSOCIATION INCLUDING A PROFESSIONAL CORPORATION
2ND FLOOR IMPERIAL SAVINGS BUILDING
2150 TULARE STREET
FRESNO, CALIFORNIA 93721

WILLIAM L. COWIN, INC.
STEVEN R. HRDLICKA

AREA CODE 209
TELEPHONE 445-1234

June 12, 1989

Victor A. Cohen
Senior Attorney
Farm Credit Administration
1501 Farm Credit Drive
McLean, Virginia 22102-5090

Re: Leo and Joyce Yarbrough v. Federal Land Bank Assn. of Fresno

Dear Mr. Cohen:

On behalf of my clients, Leo and Joyce Yarbrough, we respectfully request that you commence an investigation into Federal Land Bank Association of Fresno's conduct and activities towards the Yarbroughs in reference to Loan No. 0237653-9-0.

The Yarbroughs have not commenced litigation against Federal Land Bank as of this date but we do anticipate that litigation may be necessary against Federal Land Bank for violations of the Yarbroughs borrowers' rights under the 1987 Agricultural Act as those rights relate to debt restructure. If the Yarbroughs are forced to sue, then based on the past representations and conduct of Federal Land Bank, the Yarbroughs will be litigating for fraud, breach of contract, mental distress and punitive damages.

I enclose herewith a copy of written testimony solicited of the Yarbroughs which we anticipate will be utilized in the forthcoming Senate Agricultural Subcommittee hearings respecting abuses by Farm Credit System of the Borrowers' Rights provisions of the 1987 Agricultural Credit Act. If you feel that additional documents and correspondence which evidence the facts and truthfulness of the Yarbroughs' testimony would be of assistance to you, then please feel free to contact me and I will provide that information to you.

Victor A. Cohen
Senior Attorney
Farm Credit Administration
Re: Leo and Joyce Yarbrough v. Federal Land Bank Assn. of Fresno

Page 2
June 12, 1989

I believe it is eminently unfair that the Yarbroughs must resort to court processes and the expenses and stress attendant thereto when an organization exists such as Farm Credit Administration specifically for the purpose of establishing policies, supervising those policies, and assuring those policies are implemented and followed by Farm Credit System instititutions.

If you have any questions or require additional documents or information, please do not hesitate to contact me. You will find the Yarbroughs to be most pleasant and cooperative people.

Sincerely yours,

COWIN & HRDLICKA

William L. Cowin

WILLIAM L. COWIN

WLC:cmk
Enclosure
cc: Leo and Joyce Yarbrough

Hon. Richard Thornberg, U. S. Atty. Gen., Washington, D. C.

Hon. David Levy, U. S. Atty., East. Dist., Fresno/Sacramento, CA.

Mark Cullers, Esq., U. S. Atty., Fresno, CA.

DONALD L. JACKSON
PATRICIA V. JACKSON
P. O. Box 126
Traver, California 93673
(209) 897-7506, 897-5034

June 12, 1989

Victor A. Cohen
Senior Attorney
Farm Credit Administration
1501 Farm Credit Drive
McLean, Virginia 22102-5090

Re: Jackson v. FCCA, et al.

Dear Mr. Cohen:

In reference to the above case, prior in time to receiving your February 17, 1989 letter, our attorney was served with voluminous motions for dismissals to dismiss and strike our complaint, as well as requests for sanctions in the our case, all of which came to hearing in March 1989. On May 9 the federal District Court in Fresno issued its Decision which required that we file an amended complaint, a copy of which I enclose herewith.

The federal District Court held that the we do have a right of private action to litigate in regard to violations of our borrowers' rights under the 1987 Agricultural Credit Act and furthermore that we could litigate for all tort damages, as well as punitive damages inasmuch as Federal Land Banks and Production Credit Associations are no longer federal instrumentalities and can be sued and can sue just like any federal chartered financial institution.

The Court also held that we have had made a prima facie showing of violations by Farm Credit System of our borrowers' rights under the 1987 Agricultural Credit Act.

By way of this letter, we are renewing our request that you commence an investigation of the abuses of Farm Credit System and their violations of our borrowers' rights through the Farm Credit Administration administrative process. The Jacksons have had to post a $500,000 cash undertaking in order to maintain a lis pendens on our property in order to keep Federal Land Bank from disposing of our property to third parties as opposed to selling the property to us as required under the Agricultural Credit Act of 1987.

Additionally, we are having to expend tremendous amounts of time, effort and money in the litigation against Farm Credit System, all of which should have been avoided if Farm Credit Administration had stepped in and properly supervised Farm Credit System in regard to our borrowers' rights.

Respecting the request for additional information in your February 17, 1989 letter, our Federal Land Bank loan number for the Liberty Ranch with Federal Land Bank Association of Visalia was Loan No. 0238422-1-0. The enclosed amended complaint with the attachments sets forward the specific aspects of the 1987 Act that have been violated with great specificity and additionally sets forward the names of the entities and individuals responsible for those violations. We would request that under the applicable penalty provision that the individuals and the institutions should be fined $500 each per day since January 6 of 1988 for their wrongful conduct towards us and their violations of the our borrowers' rights under the 1987 Agricultural Credit Act.

If you require any additional information, please do not hesitate to contact us direct or our attorney, William L. Cowin. We are available for personal meetings with you in your offices in Virginia or in California and I was, in fact, in Washington, D. C. this past week for three days meeting with various Congressmen and Senators who will be involved in the Congressional oversight hearings respecting Farm Credit System's violation of borrowers' rights under the Agricultural Credit Act of 1987.

We believe Farm Credit Administration has a duty and obligation to step into this matter and make a thorough investigation and assist borrowers such as ourselves in resolving their issues in order that borrowers are not further abused by Farm Credit System utilizing the judiciary processes to further browbeat their borrowers.

Sincerely yours,

Donald L. Jackson

DONALD L. JACKSON

DLJ:cmk
Enclosure
cc: William L. Cowin, Attorney at Law

Loan No.[redacted]

LOAN RESTRUCTURE AGREEMENT

This Loan Restructure Agreement (the "AGREEMENT") is made as of March 1, 1989, by and between WESTERN FARM CREDIT BANK, formerly the FEDERAL LAND BANK OF SACRAMENTO ("BANK"), [redacted] [redacted], a California corporation; [redacted] and [redacted] (collectively referred to as ("BORROWER"). This AGREEMENT is entered into with respect to the following facts:

A. Pursuant to a Promissory Note dated June 12, 1980, and an Agreement for Change in Loan Payments dated March 31, 1983, BORROWER is indebted to BANK in the amount of Eight Hundred Thirty-Six Thousand Five Hundred Ninety Nine Dollars and Fifty-Five Cents ($836,599.55) as of March 20, 1989 (the "Indebtedness").

B. The Indebtedness is secured by a Deed of Trust dated June 12, 1980, encumbering approximately 213 acres located in Sutter County, California ("Real Property").

C. The Indebtedness is in default as a result of BORROWER's failure to pay the installment of principal and interest which was due on January 1, 1988, and the installment of principal and interest which was due on January 1, 1989.

D. BORROWER submitted an Application for Restructure under the Agricultural Credit Act of 1987 ("Act") which was not

[redacted]

approved. At the request of BORROWER a Credit Review Committee reviewed the Association's denial of the Application for Restructure and upheld the Association's decision. Subsequently, BORROWER and BANK entered into negotiations in an effort to reach an agreement to satisfy the defaults outside the purview of the Borrower's Rights provisions of the Act.

E. The parties desire to enter into this Restructure Agreement for the purpose of effectuating BORROWER's Plan to cure the defaults and fully repay the Indebtedness.

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions hereof, it is agreed as follows:

1. ACKNOWLEDGEMENT OF INDEBTEDNESS.

a. BORROWER acknowledges that as of March 20, 1989, the Indebtedness is Eight Hundred Thirty-Six Thousand Five Hundred Ninety-Nine Dollars and Fifty-Five Cents ($836,599.55), itemized as follows:

Principal Balance -	$647,415.86
Interest Due -	$166,752.78
Interest on Delinquent Installments -	$ 21,950.17
Advances -	$ 480.74
Total Indebtedness -	$836,599.55

In addition, the Indebtedness shall include interest at the variable rate as provided in the Loan Documents and advances, title insurance premiums, attorney's fees and other expenses paid or incurred by BANK subsequent to March 20, 1989 in connection with the Indebtedness.

[redacted]

b. BORROWER is the owner and holder of B-Stock issued by Sacramento Valley Federal Land Bank Association ("FLBA") with a par value of Thirty-Seven Thousand Six Hundred and Eighty Dollars ($37,380.00) which may be held, retired and otherwise applied to the Indebtedness in accordance with the Bylaws of the Association, Capital Adequacy Plan, and policies and procedures relating to the issuance and retirement of capital stock.

c. The Indebtedness is evidenced and secured by the following ("Loan Documents"):

(i) Promissory Note dated June 12, 1980, in the original principal sum of Seven Hundred Sixty-Two Thousand Dollars ($762,000.00).

(ii) Agreement for Change in Loan Payments dated March 31, 1983.

(iii) A Deed of Trust dated June 12, 1980, recorded June 26, 1980 in [redacted], [redacted], Official Records of Sutter County, California.

d. Pursuant to the Loan Documents, the Indebtedness is secured by a first priority lien on the Real Property described in the Deed of Trust.

e. Any defense, counterclaim, offset, cross-complaint, claim or demand of any nature against BANK or its Affiliates (as defined in Paragraph 5), arising out of the Indebtedness, or out of any transaction between BANK and BORROWER are acknowledged by BORROWER to be non-existent, or to the extent they may exist, are irrevocably and forever released

[redacted]

pursuant to Paragraph 5.

2. REPAYMENT OF THE INDEBTEDNESS. BORROWER agrees that the Indebtedness shall be fully repaid on the following terms and conditions:

a. Upon execution of this Agreement, BORROWER will execute a Security Agreement and UCC-1 Financing Statement granting to BANK a security interest in all payments due to [redacted] from Tri-Valley Marketing Association, Sunsweet Prune Growers Association and other processors ("Processors") from the sale of the entire 1988 crop of [redacted] and shall grant to BANK a security interest in the entire 1989 crop and crop proceeds of [redacted].

b. The security interest in the payments due for the 1988 crop and in the 1989 crop and crop proceeds shall be a first priority security interest (collectively referred to as "Personal Property Collateral"). BORROWER agrees to obtain any such subordinations, acknowledgements or assignments from third parties as may reasonably be required by BANK in order to provide BANK with a first lien priority security interest in the Personal Property Collateral and shall execute such documents as may reasonably be required by BANK in order to perfect or otherwise evidence BANK's first priority security interest in the Personal Property Collateral.

c. BORROWER agrees that the delinquent installment due January 1, 1988, in the amount of Ninety-Eight Thousand Four

[redacted]

Hundred Forty-Four Dollars and Twenty-Two Cents ($98,444.22), the delinquent installment due January 1, 1989 in the amount of Ninety-Five Thousand Five Hundred Seventy-Four Dollars and Ninety-Six Cents ($95,574.96), all interest due on the delinquent installments and all advances paid or incurred by BANK shall be paid in full prior to February 1, 1990. BORROWER further agrees that in all other respects, the Indebtedness shall be in a current status as of February 1, 1990, including payment of the installment of principal and interest to be due on January 1, 1990. Provided the Indebtedness is in a current status as of February 1, 1990 and BORROWER is not otherwise in default under this AGREEMENT or the Loan Documents, BANK agrees to release its security interest in any remaining portion of the Personal Property Collateral.

d. BORROWER agrees that all proceeds from the Personal Property Collateral shall be applied by BANK to the delinquencies immediately upon receipt by BANK and BORROWER agrees to execute such documents as BANK may reasonably request in order to provide for the direct payment from Processors directly to BANK pursuant to BANK's security interest in the Personal Property Collateral.

e. BORROWER further agrees and acknowledges that BORROWER's obligation to pay all delinquencies and to have the loan in a fully current status prior to February 1, 1990, is a direct and independent obligation of BORROWER and is not conditioned or dependent upon the payment or receipt of funds

[redacted]

from the Processors. To the extent necessary, BORROWER agrees to pay such additional sums as may be necessary to bring the loan fully current prior to February 1, 1990, in addition to any sums actually received by BANK pursuant to its security interest in the Personal Property Collateral.

f. So long as BORROWER is in full compliance with the terms and conditions of this Agreement and the Loan Documents, BANK agrees to forbear on the right to declare default under the Loan Documents as a result of BORROWER's failure to pay the installments due on January 1, 1988, and January 1, 1989, and agrees that it shall not commence any foreclosure proceedings or enforce any other remedies under the Loan Documents. BORROWER acknowledges their understanding that BORROWER's failure to fully comply with the terms and conditions of this Agreement shall entitle BANK to proceed with the enforcement of any and all rights and remedies under the Loan Documents and applicable law.

g. BORROWER acknowledges and agrees that the Indebtedness shall continue to be secured by the Real Property, shall be also secured by the Personal Property Collateral and that all of the Loan Documents shall remain in full force and effect, except as specifically modified by this Agreement.

3. REPRESENTATIONS AND WARRANTIES OF BORROWER. BORROWER hereby makes the following representations and warranties to BANK, which representations and warranties shall survive the execution date of this Agreement and all of which are material and are being relied upon by BANK, and all of which are complete

[redacted]

and accurate:

a. [redacted] is a corporation properly organized, validly existing and in good standing under the laws of the State of California and has all requisite power and authority to own its properties and to carry on its business, including the execution and performance of this Agreement.

b. The financial statements and related information provided to BANK in connection with the negotiations leading to this Agreement are true, complete and correct and show all material liabilities, direct or contingent and fairly represent the financial condition of the parties indicated for the period indicated. Without limiting the generality of the foregoing, there is due from Processors for the sale of the 1988 crop of [redacted] no less than Two Hundred and Twelve Thousand Dollars ($212,000.00) which is payable on the following dates in at least the following amounts:

March 1, 1989 -	$ 53,000.00
July 1, 1989 -	$ 53,000.00
September 1, 1989 -	$ 53,000.00
January 1, 1990 -	$ 53,000.00

c. BORROWER has the full right, power and authority to grant to BANK a first priority security interest in the Personal Property Collateral and in doing so shall not be in breach or default under any other agreement or obligation with any third party.

[redacted]

4. COVENANTS. BORROWER covenants and agrees that so long as the Indebtedness or any portion thereof remains outstanding or in effect, and until the full and final payment of the Indebtedness, and in addition to all other covenants and agreements contained in the Loan Documents, BORROWER, unless BANK waives compliance in writing:

a. Will repay the Indebtedness according to the Loan Documents as modified by this Agreement;

b. Will furnish within 45 days following the expiration of the fiscal year, financial reports, including a balance sheet and profit and loss statement for the preceding fiscal year for [redacted] and [redacted]

c. Will furnish such information as BANK may reasonably request and permit such examination of the Real Property and BORROWER's books and records as BANK may reasonably specify;

d. Will promptly notify BANK in writing of the occurrence of any event of default under this AGREEMENT or any other agreement between BORROWER and BANK or any other lender or of any event which would become an event of default upon the lapse of time or giving of notice or both.

5. RELEASE OF ALL CLAIMS.

a. Except for the obligations created by and the rights expressly reserved in this Agreement and the Loan Documents, BORROWER hereby releases and discharge BANK and the

FLBA and directors, officers, employees and agents of BANK and FLBA ("Affiliates"), from any and all claims, demands, liabilities, causes of action, obligations, costs, expenses, fees, of whatsoever kind and nature, whether known or unknown, which BORROWER now owns or holds or has or at any time heretofore owned or held against BANK, FLBA, or their Affiliates, including any claim that BANK, the FLBA, or any Affiliate damaged or injured BORROWER or that BANK, FLBA, or any Affiliate engaged in any unfair, wrongful or illegal practice or activity. Without limiting the generality of the foregoing, this release shall apply to any and all acts or omissions, whether known or unknown, relating to or arising in connection with all loans made by BANK to BORROWER, the servicing and administration of those loans, or any matter relating to this Agreement.

b. Except with respect to the Indebtedness, the obligations of BORROWER under this AGREEMENT, the Loan Documents and any and all rights which inure to BANK thereunder, BANK hereby irrevocably releases and discharges BORROWER and the heirs, administrators, successors, assigns, officers, representatives, agents, attorneys, employees, counsel and related entities of BORROWER (Affiliates) from any and all claims, demands, liabilities, suits, complaints, cross-complaints, debts, damages, offsets and assertions of any kind or nature which BANK or its above-mentioned Affiliates, may have against BORROWER or BORROWER'S Affiliates; providing, however, (a) that this release shall not in any way affect the relative

[redacted]

rights of BANK as against third parties other than BORROWER and (b) this release shall in no way constitute a waiver by BANK, of any lien, security interest, or mortgage, or the priority of any such lien, security interest, or mortgage, or of any rights which arise out of or inure to BANK as a result of this AGREEMENT or the Loan Documents.

c. BORROWER and BANK waive the provisions of Section 1542 of the California Civil Code which provides as follows:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

6. EVENTS OF DEFAULT. BORROWER shall be in default hereunder if any one or more of the following events (Events of Default) occurs, whatever the reason for such event of default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree, or order of any court or pursuant to any order, rule or regulation of any administrative or governmental body:

a. Failure to perform any of the terms, covenants, agreements or conditions of this AGREEMENT or the Loan Documents, including without limitation the granting of a first priority security interest in the Personal Property Collateral.

b. Any representation or warranty heretofore or hereafter made by or on behalf of BORROWER to BANK shall prove false when made.

c. Any default shall occur under any other agreement

[redacted]

or instrument involving the borrowing of money or the advance of credit to which the BORROWER may be a party as BORROWER, including, but not limited to, any other loan agreement held by the BANK or any other lender.

d. Any event shall occur which constitutes a default under any note or other instrument or agreement required of BORROWER hereunder, including but not limited to, any security agreement, deed of trust, mortgage or any other document evidencing security for any obligation of BORROWER to BANK.

e. Any bankruptcy or insolvency proceedings, or assignment for benefit of creditors is commenced or made which affects any Collateral or BORROWER applies for or consent to the appointment of any receiver or similar officer for all or any part of the Collateral or such receiver or similar officer is appointed without the application or consent of BORROWER and such appointment continues undischarged or unstayed for 60 calendar days; or BORROWER institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, liquidation, rehabilitation, or similar proceedings which affects all or any part of any collateral securing the Indebtedness.

7. REMEDIES UPON DEFAULT. Upon the occurrence of and during the continuance of each and every Event of Default:

a. BANK may declare the entire unpaid principal of the Indebtedness, all interest accrued and unpaid thereon, and all other amounts payable under this AGREEMENT and the Loan Documents, to be forthwith due and payable, without protest,

[redacted]

presentment, demand, or further notice of any kind, all of which are expressly waived by BORROWER;

b. Upon such acceleration of amounts payable as aforesaid, BANK may, without notice or demand, both of which are expressly waived by BORROWER, immediately proceed to protect, exercise, and enforce its rights under the Loan Documents and such other rights as are provided by law either with or without judicial process or by action at law, suit in equity, or other appropriate legal or equitable proceedings, and shall have the right to determine in its sole discretion the order and manner in which the BANK's rights and remedies are to be exercised.

8. CLOSING. The execution of all documents contemplated herein shall occur on or before April 15, 1989 (the "Closing Date"). The Closing Date may be extended by the mutual written agreement of BORROWER and BANK. In the event the closing does not occur on or before the Closing Date or any extension thereof, this AGREEMENT will automatically terminate.

9. MISCELLANEOUS.

a. Primary Agreement. In case of a conflict between the provisions of this AGREEMENT and the provisions of any of the Loan Documents, the provisions of this AGREEMENT shall control.

b. Cumulative Remedies; No Waiver. The rights, powers, and remedies provided herein or in any note or loan document are cumulative and not exclusive of any right, power or remedy provided by law or equity. No failure or delay on the part of BANK in exercising any right, power or remedy may be, or

[redacted]

may be deemed to be, a waiver thereof; nor may any single or partial exercise of any right, power or remedy preclude any other or further exercise of any other right, power or remedy.

c. Loan Documents. Except as specifically provided by this AGREEMENT, all of the terms, covenants and conditions of the Loan Documents shall remain in full force and effect without modification or amendment.

d. Amendments; Consents. No amendment, modification, supplement, termination, or waiver of any provision of this AGREEMENT or any Loan Document, or any consent to any departure of BORROWER therefrom, may in any event be effective unless the same is in writing and signed by BANK and then only in the specific instance and for the specific purpose given.

e. Costs and Expenses. BORROWER shall pay on demand all reasonable legal fees and other out-of-pocket expenses incurred by BANK in connection with the enforcement, amendment or waiver of this AGREEMENT or any Loan Document or in connection with the creation or preservation of BANK's lien or security interest in any collateral covered or intended to be covered by any Loan Document.

f. Attorneys' Fees and Expenses. Whether or not litigation is necessary to enforce any of the provisions of this AGREEMENT or any of the Loan Documents, the prevailing party or parties shall receive from the non-prevailing party or parties all costs, expenses and attorneys' fees incurred in connection with pursuing any rights under this AGREEMENT.

[redacted]

g. Severability Clause. In the event any of the terms, conditions or covenants contained in this AGREEMENT shall be held to be invalid, then such invalidity shall not affect any other terms, conditions or covenants contained herein, which shall remain in full force and effect.

h. Entire Agreement. This AGREEMENT, together with exhibits and documents referred to herein, constitutes the complete agreement between BANK and BORROWER with respect to the subject matter referred to herein and supersedes all prior or contemporaneous negotiations, promises, covenants, agreements or representations of every nature whatsoever with respect to such subject matter, all of which have been merged and integrated into this AGREEMENT. Each of the parties understands that in the event of any subsequent litigation, controversy or provisions of this AGREEMENT, none of the parties shall be permitted to offer or introduce any oral evidence concerning any other oral promises or oral agreements between the parties relating to the subject matter of this AGREEMENT not included or referred to herein and not reflected by a writing. This AGREEMENT cannot be amended, modified or supplemented except by a written document signed by all the parties hereto.

i. Additional Assurances. BORROWER and BANK each agree that each will execute such other documents or instruments as may be reasonably necessary to carry out and effectuate the purpose and intent of this AGREEMENT.

j. Waiver. The waiver by BANK of any existing or

[redacted]

future default of any of the terms of this AGREEMENT or of any of the Loan Documents shall not be deemed a waiver to declare any future default, and no such waiver shall be deemed, or shall constitute, a waiver of any other provisions, and no waiver of any type shall be binding unless evidenced by a writing signed by the party making the waiver.

k. Time of Essence. Time is of the essence in the performance of this AGREEMENT.

l. Binding Effect. This AGREEMENT shall be binding upon and shall inure to the benefit of the respective parties hereto, their heirs, estates, successors and assigns.

m. Recitals Incorporated. The Recitals are incorporated as part of this AGREEMENT.

n. Survival of Representations. All representations and warranties set forth herein shall survive the execution of this AGREEMENT.

o. Advice of Counsel. The parties hereto represent and acknowledge that each of them has been represented by counsel with respect to this AGREEMENT and all matters covered by or related to this AGREEMENT. Each party has been fully advised with respect to all rights which are affected by this AGREEMENT.

p. Governing Law. This AGREEMENT, and any note or other instrument or agreement required hereunder, shall be governed by and construed in accordance with the laws of the State of California except to the extent federal law governs.

q. Counterparts. This Agreement may be executed in

[redacted]

two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10. OUTSIDE BORROWERS' RIGHTS. BORROWER hereby agrees and acknowledges that this Restructure Agreement has been entered into following the denial of BORROWER's Restructure Application under the Borrowers' Rights provisions of the Agricultural Credit Act of 1987, a review of that denial by a Credit Review Committee, and as a result of subsequent negotiations outside the purview of BORROWER's rights. BORROWER understands and agrees that in the event there is a default hereunder, BORROWER shall not be entitled to further or additional Borrower Rights under the Act or the Distressed Loan Restructuring Policy of the Sacramento Farm Credit District.

BORROWER understands and agrees that the transactions contemplated by this Agreement are being done at BORROWER's request. BANK does not represent, warrant or guarantee that the transactions contemplated herein are financially viable or feasible within the time frames indicated.

BANK:

WESTERN FARM CREDIT BANK

By ______________________________

[redacted]

BORROWER: [redacted]
a California corporation

By ______________________
[redacted] President

By ______________________
[redacted], Secretary

____
[redacted]

____
[redacted]

[redacted]

[redacted]

Note
This agreement was negotiated
on Nov 1987, before the
Ag credit Act but was finished
on June 1988. The borrowers were never
contacted regarding Debt
Restructure under the 1987 Act!

Loan No. [redacted]

AMENDING LOAN AGREEMENT

THIS AMENDING LOAN AGREEMENT is entered into this 13th day of June, 1988, between [redacted] and [redacted] ("Borrower") and th FEDERAL LAND BANK OF SACRAMENTO, a corporation organized and existing unde the laws of the United States of America, ("Bank").

RECITALS:

A. On April 13, 1982, Bank made a loan to Borrower in the face amount of $143,000.00 evidenced by a promissory note dated March 23, 1982 ("Original Note"), which Original Note is evidenced on the books of the Bank as Loan No. [redacted] (the "Loan").

B. Borrower desires to enter into this Amending Loan Agreement to restate the Loan, to reamortize the loan payments set forth in the Original Note, and to provide procedures for assigning this loan from time to time to appropriate interest rate groups pursuant to the Bank's individual loa pricing plan.

C. This Agreement is executed in conjunction with the settlement of that certain litigation between Bank and Borrower as set forth in the Superior Court of the State of California, County of Fresno, case number [redacted], and in accordance with any and all orders of the United States Bankruptcy Court, Eastern District of California, case number [redacted] and adversary proceeding [redacted], pertaining to Borrower's chapter 11 petition filed July 3, 1986.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. Loan.

a. Bank and Borrower hereby confirm the obligations represented by the Original Note, which has an outstanding balance as of February 1, 1988, as follows:

(1)	Unmatured principal balance	$133,618.02
(2)	Delinquent/matured principal	6,632.65
(3)	Delinquent interest	51,328.13
(4)	Advances made	4,587.03
(5)	Default interest	954.66
(6)	Prepaid title expense/fees	1,000.00

Total obligation before reamortization		$198,120.49

b. Bank and Borrower agree that the total obligation set forth subparagraph 1a above shall be reamortized as hereinafter set forth. conjunction with the reamortization, Borrower agrees to pay as additio principal under the Loan additional capital stock investment in the Federal L

Bank Association of Kingsburg ("FLBA") and a loan surcharge. The total amended principal owing under this Amended Loan Agreement shall be as follows:

(1)	Total obligation before reamortization	$198,120.49
(2)	Loan Surcharge	1,395.00
(3)	New Capital Stock in the FLBA	3,875.00

TOTAL REAMORTIZED PRINCIPAL		$203,390.49

Borrower agrees to execute an amendment to promissory note to reflect the new interest rate procedures and the reamortization schedule set forth herein, a copy of which is attached hereto as Exhibit A ("Note").

2. Interest Rate. The Loan shall bear interest at the rate or rates established under the provisions of the Note. Specific reference is made to the provisions in the Note regarding interest rate groups and the right of the Bank, on and after February 1, 1991, to change the applicable interest rate group assigned to the Loan.

3. Security. The Loan and the promissory note are and shall be secured pursuant to that certain deed of trust dated March 23, 1982, and recorded on April 13, 1982, in Book [redacted], at Page [redacted], as Instrument Number [redacted] of the Official Records of Fresno County, State of California, and pursuant to a security agreement and UCC-1 financing statement granting and confirming to Bank a lien on Borrower's crops and crop proceeds ("Security Documents"). The Security Documents shall constitute a first priority lien subject only to those interests approved by Bank.

4. Repayment. The Loan shall be repaid as set forth in the Note. Borrower shall have the right to prepay the Loan with interest, with all such prepayments being applied against the most remote principal installment payable under the Note. Proceeds acquired from the liquidation of collateral may be applied to costs, expenses, and to repay this or other loans to Borrower in the order and amount the Bank determines. Any failure to pay an installment of principal and/or interest when due shall be subject to a default charge and default interest as set forth in the Note.

5. Insurance. Borrower agrees to maintain insurance with responsible insurance companies or associations (reasonably satisfactory to Bank) in such amount and against such risks as Bank may require, showing Bank as loss payee thereunder and deliver the original or duplicate original of all such insurance policies to Bank.

6. Reports. Borrower shall furnish Bank as soon as possible, but in no event later than 120 days after each fiscal year end, financial reports for each of the undersigned, including a balance sheet and a profit and loss statement.

7. Other Documents. Borrower agrees to furnish any other documents Bank may reasonably require from time-to-time in order to carry out the intent of this Agreement.

8. Covenants. Borrower covenants and agrees that so long as the Loan or any portion thereof remains outstanding or in effect, and until the full and final payment of all indebtedness incurred hereunder, Borrower, unless Bank waives compliance in writing:

a. Will maintain its eligibility status as a Borrower, as defined by the Farm Credit Act of 1971 or any successor or amendment thereto or replacement thereof;

b. Will repay the Loan according to the terms of this Agreement and the promissory note or notes;

c. Will furnish such information as the Bank may reasonably request relative to its affairs and permit such examination of its books and records as the Bank may reasonably specify;

d. Will promptly notify Bank in writing of the occurrence of any event of default under this Agreement or any other agreement between Borrower and the Bank or any other lender or of any event which would become an event of default upon the lapse of time or giving of notice or both;

e. Will not abandon any property granted as security pursuant to the Security Documents or leave such property unprotected, unguarded, vacant or deserted, and will not cause or permit any waste to the buildings, improvements or fixtures constituting a portion of the mortgaged property.

9. Events of Default. Borrower shall be in default hereunder if any one or more of the following events ("Events of Default") occurs and is continuing (whatever the reason for such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree, or order of any court or to any order, rule or regulation of any administration or governmental body):

a. Borrower fails to pay on the date when due any installment of principal or interest on the note or notes;

b. Any representation or warranty heretofore or hereafter made by or on behalf of the Borrower to the Bank shall prove false when made;

c. Any default shall occur under any other agreement or instrument involving the borrowing of money or the advance of credit to which the Borrower may be a party as borrower, including but not limited to, any other Loan Agreement held by the Bank or any other lender;

d. Breach is made of any of its obligations or agreements in connection herewith;

e. Any event shall occur which constitutes a default under any note or other instrument or agreement required of the Borrower hereunder, including but not limited to, any security agreement, deed of trust, mortgage, or any other document evidencing security for the Loan;

f. The Borrower is adjudicated a bankrupt or insolvent, or is unable or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or Borrower applies for or consents to the appointment of any receiver, trustee, conservator, or similar officer for it or for all or any part of its property; such receiver, trustee, conservator, or similar officer is appointed without the application or consent of Borrower and such appointment continues undischarged or unstayed for 60 calendar days; or Borrower institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, conservatorship, liquidation, rehabilitation, or similar proceeding relating to it or to all or any part of its property under the laws of any jurisdiction; or any such proceeding is instituted under the laws of any jurisdiction; or any such proceeding is instituted without the consent of Borrower and continues undismissed or unstayed for 30 calendar days; or any judgment, writ, warrant of attachment or execution, or similar process is issued or levied against all or any part of the property of Borrower and such judgment, writ, warrant, or similar process is not released, vacated, or fully bonded within 30 calendar days after its issue or levy.

10. Remedies Upon Default. Upon the occurrence of and during the continuance of each and every Event of Default:

a. The Bank may, by notice to Borrower, declare the entire unpaid principal of all notes, all interest accrued and unpaid thereon and all other amounts payable under this Loan Agreement and all similar amounts under any other Loan Agreement between Borrower and Bank to be forthwith due and payable, without protest, presentment, demand, or further notice of any kind, all of which are expressly waived by Borrower;

b. Upon such acceleration of amounts payable as aforesaid, Bank may, without notice or demand, both of which are expressly waived by Borrower, exercise and enforce its banker's lien and right of offset as to all monies, properties and accounts of the Borrower in the possession of or maintained by Bank; and

c. The Bank may proceed to protect, exercise, and enforce its rights under the Security Documents and such other rights as are provided by law either without judicial process or by an action at law, suit in equity, or other appropriate legal or equitable proceeding, and shall have the right to determine in its sole discretion the order and manner in which the Bank's rights and remedies are to be exercised.

11. Cumulative Remedies; No Waiver. The rights, powers, and remedies provided herein or in any Note or Security Document are cumulative and not exclusive of any right, power or remedy provided by law or equity. No failure or delay on the part of Bank in exercising any right, power, or remedy may be, or may be deemed to be, a waiver thereof; nor may any single or partial exercise of any right, power, or remedy preclude any other or further exercise of any other right, power or remedy.

12. Amendments; Consents. No amendment, modification, supplement, termination, or waiver of any provision of this Agreement or any Security Document, or any consent to any departure by Borrower therefrom, may in any event be effective unless the same is in writing and signed by Bank and then only in the specific instance and for the specific purpose given.

13. Costs and Expenses. Borrower shall pay on demand all legal fees and other out-of-pocket expenses incurred by Bank in connection with the enforcement, amendment or waiver of this Loan Agreement or Security Document or in connection with the creation or preservation of Bank's lien or security

interest in the assets of Borrower covered or intended to be covered by any Security Document.

14. Governing Law. This Agreement, and any Note or other instrument or agreement required hereunder shall be governed by and construed in accordance with the laws of the State of California.

15. Severability. Any provision of this Loan Agreement, the Note, the Security Documents or any other document contemplated herein which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of such loan documents or affecting the validity or enforceability of such provision in any other jurisdiction.

16. Borrowers' Rights.

a. Borrower(s) hereby acknowledge that they have received a copy of the Distressed Loan Restructuring Policy of the Sacramento Farm Credit District on the treatment of distressed loans ("Distressed Loan Policy"). Borrower(s) further acknowledge and agree that this Agreement constitutes Borrower(s)' entire restructure plan pursuant to the Distressed Loan Policy and their Application for Restructure submitted thereunder.

b. Borrower(s) understand and agree that in the event there is an event of default hereunder, Borrower(s) shall not be entitled to further or additional borrowers' rights under the Distressed Loan Policy.

c. Borrower(s) understand and agree that the loan restructure evidenced by this Agreement is being done at Borrower(s)' request. The Bank does not represent, warrant, or guarantee that the operations of Borrower(s) will become financially viable as a result of this loan restructure.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date first above written.

FEDERAL LAND BANK OF SACRAMENTO

[redacted]

By [redacted]

Vice President

[redacted]

H. L. RICHES & SONS, INC.
11845 Sunnyview Road, N. E.
Salem, Oregon 97301
Phone: (503) 873-4770

June 13, 1989

The Honorable Kent Conrad
United States Senate
361 S. D. O. B.
Washington, D. C. 20510

Dear Senator Conrad:

In the rush to forward our summary and enclosures to you yesterday, the enclosed Second Amended Complaint and correspondence to Senator Hatfield from F.C.S. were omitted. Also we noticed that there were two errors in the letter

1. The telephone number for H. L. Riches should be (503) 873-4770.
2. On page 5, paragraph 1, the amount of acres should read 1,200 not $1,200.

Thank you for your interest and assistance. Please let me know if there is any other information we can provide you with.

Sincerely,

Jack C. Riches, President
H. L. RICHES & SONS, INC.

JCR:clr

Enclosures

H. L. RICHES & SONS, INC.
11845 Sunnyview Road, N. E.
Salem, Oregon 97301
(503) 873-5770

June 9, 1989

The Honorable Kent Conrad
United States Senate
361 S.D.O.B.
Washington, D. C. 20510

RE: Testimony of Jack Riches to Farm Credit Systems (FCS) ongoing attempts to foreclose on our farm and total disregard of the 1987 Farm Credit Act

Dear Senator Conrad:

This letter is being written at the request of Willoughby Houk, because of a letter I sent him about three weeks ago concerning our struggle to get a Chapter 11 Bankruptcy plan confirmed over the continued objections of F.C.S., and the denial of restructuring by F.C.S., under the 1987 Farm Credit Act.

I have enclosed the first five pages of our most recent Chapter 11 Disclosure statement. It is the introduction and will give you a brief picture of us, what we do and where we are. About us personally, Cathaleene Riches is 82 years old and my brother Wayne's and my mother. Wayne and I are 39 and 51 years old respectively. Carol Riches is my wife and is 44 years old and we have four children ages 5 to 15. Our father passed away at 88 in the middle of our wet harvest of 1983 that put us so far behind.

Somewhere between the first and second Disclosure statement and our Plan of Reorganization, the '87 Agriculture Credit Act came into effect. we weren't offered the chance to restructure by F.C.S., we had to ask for it in court because F.C.S. contended we weren't eligible since we were already in bankruptcy. The Judge then delayed the next confirmation hearing to give us time to apply for the restructuring provided in the Act. We were never offered nor aware of the provisions of the '85 Act.

We had originally filed five separate Chapter 12 bankruptcy's which should of worked because of some loans we had were to us as individuals, some to our corporation and some debt was inter-family. It was approved by all our creditors except F.C.S. They contended we were all liable for all of the debt which exceeded 1.5 million dollars and got it thrown out. We changed to the consolidated Chapter 11 we are presently in.

F.C.S. rejected our restructuring application, which was done just as The Act provided. When we went to the Credit Review Committee hearing, F.C.S., offered us an alternate restructuring proposal which wasn't as good as the Act would provide. We had already been in the bankruptcy for a year and our legal expense was approaching $100,000 so we decided to accept it. Farm Credit's attorney immediately wrote her version of the proposal (we didn't get anything in writing at the meeting with F. C. S., but our attorney took notes and wrote a memorandum of the discussion and decisions made).(I wish to note here that just prior to this meeting, we had requested assistance from Senator Hatfield's office regarding our problems with F. C. S. That correspondence is enclosed. You will note that according to F.C.S.'s Special Credit's Manager, he informed Senator Hatfield's office "we were close to a restructuring program in the best interest of F. C. S. and the Riches.") However, Farm Credit's attorney's version of the proposal was as if she hadn't even been present as it didn't resemble what F. C. S. offered to us in the meeting. Farm Credit's attorney added in restrictions, additions and new provisions that were never mentioned in the meeting and made what was an acceptable offer, totally unacceptable.

At that time, June 30th, 1988, we were just starting our harvest season which requires 100% of out time, but our attorney hasseled with F.C.S. and their attorney over it through July, August and into September, when our next amended disclosure statement and plan were due to be filed. Upon our attorney's advice, we rejected the proposal and requested a Credit Review Hearing and were turned down. We then filed a complaint against F. C. S. They moved to have it dismissed but we prevailed and we amended it to the Judge's ruling (copy enclosed) and since then F. C. S. has moved again to dismiss it. A copy of the front page Table of Contents, motions to strike and conclusion are enclosed.

Farm Credit Service has objected to about 98% of the issues involved in our bankruptcy proceedings whether it involved them or not. We have been trying to sell 303 acres of our 1,598 acre farm and had it sold at a fair price with a leaseback to us. F. C. S. objected and got the sale stopped, not in their best interest, our other creditors, or ours.

Our legal and witness expenses are now past $250,000 and at least 90% of that is directly the result of all the objections and harassment from F. C. S. Farm Credit's expenses must be at the very least 80% of what ours is, and the combined total would have paid off over 50% of our F. C. S. debt. I believe it is important to note that Farm Credit's attorney is an attorney in private practice on retainer with F.C.S. who stands to gain immeasurably the longer she can drag our case out and keep us from getting our plan confirmed or a workable resolution with F.C.S.

A gentleman we hired to try to negotiate directly with the F.C.S. personnel (our attorney could get now where with them) asked the F.C.S. personnel why they have pursued our case so long and hard without some sort of a settlement was told they wanted to prove some points that they could use against other farmer members in the F.C.S. We have also been told (by the same negotiator) that F,C.S. spent approximately $180,000 to foreclose on a $130,000 loan. Their reasoning was that (in their opinion) the farmer was no good, deserved to lose his farm and that's the way they do business. I don't believe the way our case has been handled and the above cited case were what Congress intended with the 1987 Act, but these are examples of the general attitude of F.C.S., and their disregard of the intent of the 1987 Farm Credit Act.

As far as the term "self-serving" being used in reference to F.C.S., I think the best proof of that in our 12th District is their own Annual Reports,(copies enclosed). Compare the year of 1984 to 1988 -- salaries and employee benefits $9,099,000 increase, occupancy and equipment $1,089,000 increase, and at the same time net loans down almost a billion, $835,878,000. All at the same time they were telling us in their press releases and advertisements that they were cutting expenses.

Senator Fowler said when helping to get the '87 Act into law, "the borrowers in the Farm Credit System have been abused, mislead and coerced by the Farm Credit

Banks and their officials." All true in our case and I would add degraded and insulted. In our case we have had to endure repeated insults from the F.C.S.'s attorney about us not being capable of producing the income to make our plan work. They past two years, according to U. S. Department of Agriculture figures, we have had gross income above the level of the top 1.3% of farmers in the United States, but we do it with less acres, average about $1,200 crop acres per year, and less people doing the work (my brother, myself and one year-round hired man, plus four to five extra at harvest time which includes three of my children).

We have also received the two highest awards a farmer in our area can get, the Soil Conservation District Award and the Wheat Grower's Conservation Farmer of the Year award. Also, our father was the first County Agriculture Extension Agent in our County and started the Grass Seed business which is our main crop. Oregon is now the grass seed capital of the world and grass seed is a major agricultural commodity for our state.

Our last confirmation hearing was May 30th. The Judge didn't approve our interest rate to pay F.C.S.,, but gave an opinion of what she thought it should be and gave us till June 9th to decide if an amended plan with her 11.5% - 12% would work and then amend our plan to do that. F.C.S. had previously been awarded a Relief From Stay if our plan was not confirmed on the May 30th date. The Judge advised them to wait because she wanted to see our plan confirmed and thought we were good farmers and should have the chance to work out of our debt. F.C.S's attorney stated they wouldn't wait and they were going ahead with foreclosure anyway. Since then, in spite of the Judge's ruling and advisory opinion on interest, Farm Credit's attorney has sent to the Judge an Order

Denying Confirmation (copy enclosed). Our attorney's response is also enclosed. The Farm Credit's attorney is extremely pushy and arrogant about the whole thing as well as I believe, unethical, in ignoring the Judge's wishes. It is interesting to note the date she sent the Order to the Judge was the same day the CEO of the 12th District was fired, (news story enclosed) -- may be some connection.

I hate to speak against our own attorney, but many other farmers have had the same problem. we went to ours because they were recommended as experienced in bankruptcy. The problem has been that they didn't know anything about farming and knew less about the operating attitude of F.C.S., lack of respect and general self-serving manner of the F.C.S. personnel and their legal counsel. Also, some very important things in the administration of our case have been very questionable at times like not putting in the interest rate in our last plan that we recommended and not using factual material I have given them such as the latest U.S.D.A. land value survey which showed 0% increase in Oregon and only 6% nation wide. F.C.S. recently got our land value increased 25% which didn't help our plan at all. Speaking of attorneys, we worked a year and a half with our previous attorney trying to negotiate with F.C.S. and our commercial bank operating lender. When it looked like we may have to file bankruptcy, he said he couldn't do it for us. Upon questioning him why, he reluctantly told us he represented the Farm Credit System. We didn't know that and also the F.C.S. loan officer we were dealing with didn't tell us that either. We later learned this same attorney also represented our operating loan bank. This attorney is our next door neighbor and owns a farm, also goes to the same church we do.

Wayne and I each put in our time in the service. Even though it was during peace time we were available and willing to defend the rights of our Nation and its people.

What we did doesn't begin to compare with the service our Father did. Harry Riches was the most respected and honorable person I have ever known, and rightfully honored for it, county, state and nationally. He was one of the few men that served this country in both WWI and WWII. Five years of active duty during WWII including a year in Germany after the war as part of the military government. He spent 33 years combined active duty and National Guard time and all that time he kept his own farm going and served as the County Agricultural Agent also.

With our father's time and ours in helping protect our country's rights, it is real hard to swallow the abuses we are getting from the F.C.S., I compare the thought of us losing any of our land to F.C.S. as to any man being convicted and sentenced to death for a crime he didn't commit.

Our major problem facing us now is our harvest which will start the last week in June. we have the best overall crop coming on that we have ever had. Wayne and I put in 20-21 hours per day the first two to three weeks and then it slows down to 17 - 18 hour days for the last four to five weeks. F.C.S. is going to be objecting to everything they can and we can't spare the time running to Portland for any more harassment during our harvest season.

We hope something can be done soon to keep F.C.S. off our backs and other farmers also, as we are trying our damndest to do a good job of farming and pay our debts while keeping the land we have worked so hard for.

Sincerely,

Jack Riches

Jack C. Riches, President
H.L. RICHES & SONS, INC.

JCR:clr

Enclosures

1986 Repor

Federal Land Bank of Spokane and Interstate Federal Land Bank Association

Combined Statement of Condition

(in thousands)

	December 31 1986	1985	1984 (unaudited)
ASSETS			
Loans	$3,046,444	$3,456,343	$3,629,533
Less allowance for loan losses	152,549	66,273	57,014
Net loans	2,893,895	3,390,070	3,572,519
Investment securities (market values – $297,397 in 1986, $264,500 in 1985, and $48,051 in 1984)	297,396	264,745	48,060
Investment in Farm Credit System Capital Corporation	38,952	—	—
Notes receivable	1,959	17,534	826
Cash	21,043	13,785	4,989
Accrued interest receivable	134,323	198,931	205,830
Premises and equipment, less accumulated depreciation	34,131	34,900	36,560
Other property owned	73,248	60,400	18,073
Other assets and deferred charges	15,250	17,458	8,428
Total Assets	$3,510,199	$3,997,823	$3,895,285
LIABILITIES			
Consolidated systemwide bonds	$2,546,122	$2,949,768	$2,959,350
Consolidated bank bonds	217,400	217,400	315,200
Consolidated systemwide notes	428,836	291,229	36,015
Notes payable	762	619	697
Financial assistance payable to Farm Credit System Capital Corporation	113,823	15,944	—
Accrued interest payable	92,190	113,693	114,963
Other liabilities	3,031	3,570	4,101
Total Liabilities	3,402,164	3,592,223	3,430,326
Contingent Liabilities	—	—	—
CAPITAL			
Capital stock	164,327	187,161	193,449
Participation certificates	3,414	5,553	6,143
Surplus (Deficit)	(59,706)	212,886	265,367
Total Capital	108,035	405,600	464,959
Total Liabilities and Capital	$3,510,199	$3,997,823	$3,895,285

The accompanying notes are an integral part of these financial statements.

Combined Statement of Operations

	(in thousands) Year ended December 31 1986	1985	1984 (unaudited)
INTEREST INCOME			
Loans including fees	$ 337,774	$418,973	$423,331
Investment securities	17,683	7,563	4,013
Other	1,982	1,306	1,161
Total Interest Income	357,439	427,842	428,505
INTEREST EXPENSE			
Consolidated systemwide bonds	315,190	351,237	350,119
Consolidated bank bonds	16,767	25,181	26,505
Consolidated systemwide notes	20,583	8,157	9,497
Notes payable	98	3,278	73
Total Interest Expense	352,638	387,853	386,194
Net interest income	4,801	39,989	42,311
Provision for loan losses	110,039	41,108	4,523
Net interest income (loss) after provision for loan losses	(105,238)	(1,119)	37,788
OTHER INCOME			
Loan origination fees	781	1,286	2,358
Fees for financially related services	230	242	191
Mineral income	782	1,768	2,694
Miscellaneous	398	110	22
Total Other Income	2,191	3,406	5,265
OTHER EXPENSE			
Salaries and employee benefits	14,720	13,931	12,575
Occupancy and equipment	2,881	2,768	2,504
Financial assistance to other Farm Credit System institutions	135,773	20,692	—
Provision for losses on other property owned	11,029	11,711	1,429
Miscellaneous	5,142	5,666	7,600
Total Other Expense	169,545	54,768	24,108
Net Income (Loss)	$(272,592)	$ (52,481)	$ 18,945

The accompanying notes are an integral part of these financial statements.

1988 Report

Consolidated Statement of Condition

	(in thousands) December 31 1988	1987	1986
ASSETS			
Loans	$2,841,564	$3,019,058	$3,521,536
Less allowance for loan losses	104,923	114,055	155,691
Net loans	**2,736,641**	**2,905,003**	**3,365,845**
Cash and investment securities (market values – $250,853 in 1988, $283,457 in 1987, and $481,302 in 1986)	251,042	283,466	481,283
Notes receivable	1,282	964	1,196
Accrued interest receivable	109,439	118,013	138,340
Investment in Farm Credit System Capital Corporation	—	40,945	39,404
Other property owned, net	31,892	46,915	74,483
Premises and equipment, less accumulated depreciation	32,260	34,191	34,924
Other assets and deferred charges	14,376	16,810	18,736
Total Assets	$3,176,932	$3,446,207	$4,154,211
LIABILITIES			
Consolidated Systemwide bonds	$2,188,674	$2,345,992	$2,909,177
Consolidated bank bonds	80,750	152,300	262,400
Consolidated Systemwide notes	602,065	628,771	565,211
Notes payable	3,856	3,919	762
Accrued interest payable	76,202	82,529	100,956
Financial assistance payable	6,010	106,421	120,614
Other liabilities	8,095	4,201	5,837
Total Liabilities	2,965,652	3,324,133	3,964,957
Contingent liabilities	—	—	—
Minority Interest in FCB			
Capital Stock	79,008	66,157	66,157
Additional paid-in capital	2,688	—	—
Surplus	21,006	20,456	15,062
Total Minority Interest	102,702	86,613	81,219
CAPITAL			
Protected Borrower Capital			
Class B capital stock	131,931	—	—
Participation certificates	2,230	—	—
Other Capital			
Class B capital stock	153	142,996	164,327
Participation certificates	9	2,558	3,414
Deficit	(25,745)	(110,093)	(59,706)
Total Capital	108,578	35,461	108,035
Total Liabilities and Capital	$3,176,932	$3,446,207	$4,154,211

The accompanying notes are an integral part of these financial statements.

Interstate Federal Land Bank Association

Consolidated Statement of Operations

(in thousands)

	Year ended December 31		
	1988	1987	1986
INTEREST INCOME			
Loans	**$291,072**	$311,785	$ 396,087
Investment securities	**17,904**	23,149	27,915
Total Interest Income	**308,976**	334,934	424,002
INTEREST EXPENSE			
Consolidated Systemwide bonds	**233,325**	275,503	354,421
Consolidated bank bonds	**7,712**	14,089	16,767
Consolidated Systemwide notes	**50,934**	38,627	32,947
Notes payable and other	**964**	725	642
Total Interest Expense	**292,935**	328,944	404,777
Net interest income	**16,041**	5,990	19,225
Provision (reversal of allowance) for loan losses	**(18,230)**	23,427	111,123
Net interest income (expense) after provision (reversal of allowance) for loan losses	**34,271**	(17,437)	(91,898)
OTHER INCOME			
Loan origination fees	**1,329**	1,197	797
Fees for financially related services	**301**	207	231
Mineral income	**658**	713	782
Net gain on sale of other property owned	**6,173**	6,256	1,219
Financial assistance reversed	**100,036**	—	—
Miscellaneous	**40**	1,386	399
Total Other Income	**108,537**	9,759	3,428
OTHER EXPENSE			
Salaries and employee benefits	**21,674**	22,518	[illegible]
Occupancy and equipment expense	**3,593**	3,936	3,280
Provision for losses on other property owned	**3,384**	4,340	11,029
Assistance Board allocation	**952**	—	—
Financial assistance to other Farm Credit System institutions	—	—	142,564
Loss on investment in FCB	**18,774**	—	—
Miscellaneous	**4,048**	6,521	8,431
Total Other Expense	**52,425**	37,315	185,000
Net income (loss) including minority interest	**90,383**	(44,993)	(273,470)
Minority interest	**(6,035)**	(5,394)	878
Net Income (Loss)	**$ 84,348**	$ (50,387)	$(272,592)

The accompanying notes are an integral part of these financial statements.

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Of Attorneys for Debtors

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In Re H. L. RICHES & SONS, INC. Debtor.	Case No. 387-02464-P11
WAYNE C. RICHES, Debtor.	Case No. 387-02465-P11
CATHALEENE C. RICHES, aka MRS. HARRY L. RICHES, Debtor.	Case No. 387-02466-P11
JACK C. RICHES, aka JACK RICHES, Debtor.	Case No. 387-02467-P11
CAROL L. RICHES, Debtor.	Case No. 387-02468-P11 FOURTH MODIFIED CONSOLIDATED DISCLOSURE STATEMENT

thereby making it unmarketable.

During the period 1981-1985, Debtors were also paying First Interstate Bank of Oregon ("FIOR") interest at the rate of 14% to 17.75% while at the same time the price of grass seed dropped to the $.30-$.40 range, the lowest in 10-15 years. This drop in price was due to the high dollar rate of exchange, which greatly reduced the amount of seed exported. Debtors were forced to suspend payments to two of its major creditors, Farm Credit Bank of Spokane ("FCB") and the Farmers Home Administration ("FmHA") in 1984. Debtors then attempted to restructure their loans with the lenders and applied for an FmHA emergency disaster loan. The FmHA local committee determined Debtors to be eligible for this assistance as stated in letter dated November 28, 1984 and incorporated herein as Exhibit A. The loan was ultimately not made because Debtors did not have a line of credit or funds sufficient to cover the 1985 projected operating expenses. Foreclosure suits were eventually filed against property which constituted the majority of Debtors' land. An attempt by Ralph and Lillian Kuenzi to place the farm operations under receivership as a part of another foreclosure suit forced Debtors to seek protection under the Bankruptcy Code.

On May 6, 1987 five individual Chapter 12 Farm Reorganization cases were filed. These cases were administratively joined and substantively consolidated and converted to a Chapter 11 proceeding on January 28, 1988.

Debtors have been operating under a series of cash collateral orders. The most recent order was signed December 14, 1988. These Orders allowed proceeds from the sale of crops to be used in a narrowly confined operation of the farm. The purpose of these Orders was to allow Debtors to stay in operation pending reorganization under Chapter 11 of the Bankruptcy Code.

Debtors have prepared and filed First, Second, Amended Second and Third Modified Consolidated Disclosure Statements and First, Second and Third Modified Consolidated Plans of Reorganization to incorporate explanation and documentation requested by the Court and certain creditors at the Disclosure Statement hearings held May 26, 1988, August 29, 1988, October 13, 1988, December 1, 1988 and April 5, 1989, to reflect certain changes in the treatment of certain classes of creditors. On February 1, 2, 3 and 8, 1989 a confirmation hearing on the Second Modified Plan was held. The court did not confirm the Second Modified Plan because it was unable to determine an appropriate interest rate on some of the claims. Debtors prepared a Third Modified Consolidated Disclosure Statement and Third Modified Consolidated Plan of Reorganization ("Plan") to reflect certain changes in the treatment of FCB and other creditors, incorporate testimony presented at the hearing, reflect the determination as to liquidation value, and revised the interest to be paid on certain of the secured and unsecured claims. In response to objections of FCB to the Third Modified Disclosure Statement and based on the hearing held April 5, 1989, Debtors have prepared this Fourth Modified Disclosure Statement and Plan. Debtors seek the Court's approval to submit the Plan to creditors and equity holders of Debtors. Debtors believe that the asset valuations contained in this Plan reflect the value of Debtors' property and provide realistic projections which will enable Debtors to meet the schedule to pay the claims of secured and unsecured creditors as provided in the Plan. The Effective Date is a date 11 days following the entry of an Order of Confirmation unless the Order is stayed pending an appeal. For purposes of determining asset values and claim amounts in the Plan and this Disclosure Statement, it is assumed that the Effective Date will be May 1, 1989, however, projections, payment dates and amount of claims contained herein will vary depending upon determination of the actual Effective Date.

The purpose of this Disclosure Statement is to provide adequate information about Debtors and the Plan to allow creditors to make an informed decision about the merits of the Plan. If the Plan is accepted by creditors and confirmed by the Court, the rights of creditors will be governed by the Plan.

Financial Information

The Debtors maintain their records on an October 1 - September 30 operating year basis. The following pre-confirmation balance sheet lists the assets at liquidation value less costs of sale and liabilities of the Debtors as of the Effective Date:

Rec'd

JUN 07 1989

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June 6, 1989

Honorable Elizabeth L. Perris
U.S. Bankruptcy Court
900 Security Pacific Plaza
1001 S.W. Fifth Avenue
Portland, OR 97204

Re: In re H. L. Riches & Sons, Inc.
Case No. 387-02464-P11

Dear Judge Perris:

Enclosed is a form of Order which we believe reflects the court's ruling in this matter.

Very truly yours,

Jennifer Palmquist

Jennifer L. Palmquist

JLP:ac
Encl.
cc: ✓John Crawford
Dean Morrow
Bob Boyle

4008L

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Attorney for Farm Credit Bank of Spokane

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In the Consolidated Estates of:) Consolidated Case Nos.:
)
H. L. RICHES & SONS, INC.,) Case No. 387-02464-P11
WAYNE C. RICHES, CATHALEENE C.) Case No. 387-02465-P11
RICHES, JACK C. RICHES, aka) Case No. 387-02466-P11
JACK RICHES, CAROL L. RICHES,) Case No. 387-02467-P11
) Case No. 387-02468-P11
)
) ORDER DENYING
) CONFIRMATION
) (Fourth Modified
Debtors.) Consolidated Plan)

This court having found that Debtors have not met their burden of proof on a market rate of interest proposed to be paid by debtors in their Fourth Modified Consolidated Plan to Farm Credit Bank of Spokane on its claims and having failed to show the Plan is in the best interest of creditors:

IT IS HEREBY ORDERED that confirmation of Debtors' Fourth Modified Consolidated Plan is DENIED.

DATED this _____ day of June, 1989.

____
Honorable Elizabeth L. Perris

Presented by:

Jennifer Palmquist
Jennifer L. Palmquist, OSB #79342
Attorney for Farm Credit Bank
of Spokane

0549f

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JOHN G. CRAWFORD, JR.

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June 7, 1989

The Honorable Elizabeth L. Perris
Judge, U.S. Bankruptcy Court
District of Oregon
900 Security Pacific Plaza
1001 S. W. Fifth Avenue
Portland, Oregon 97204

HAND DELIVERED

Re: In re H.L. Riches & Sons, Inc., et al.,
Case No. 387-02464-P11

Dear Judge Perris:

Contrary to Ms. Palmquist's letter of June 6, 1989, I do not believe that the form of order enclosed in her letter reflects your ruling in this case. I had understood that you had rendered an advisory opinion to the effect that you would consider proceeding further to the remaining confirmation issues on an amended Plan along the lines of that advisory opinion and that the Riches had until Friday, June 9, 1989 to inform you as to whether they wished to amend their Plan further to conform to that advisory opinion.

My preliminary review of the revised claims taken in connection with the Riches' projections lead me to believe that it will be possible for the Riches to amend their Plan. In any event, the Riches intend to meet the Friday deadline and will respond to you by letter.

In the meantime, for the reasons listed above, I would ask that you not sign the order enclosed in Ms. Palmquist's June 6th letter.

Very truly yours,

John G. Crawford, Jr.

JGC:rc

cc: Mr. Jack Riches
Ms. Jennifer Palmquist (Hand Delivered)

P.S. to Jack Riches -- Also enclosed are the computations prepared on the basis of Judge Perris' interest rate and fair market and liquidation value findings.

Capital Press
orest Weekly
FRIDAY, JUNE 9, 1989
(ISSN 0740-3740)
Volume 69, Number 23
36 Pages ☆ Price: 50 Cents ★★
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Farm Credit Bank chief canned

SPOKANE, Wash. (UPI) — The president and another top officer of the Farm Credit Bank of Spokane were fired this week in a move to make the Northwest's largest agriculture lender more competitive.

Ron Feryn, a Mead farmer and chairman of the board of the Spokane bank, said the board requested and received the resignations of President and Chief Executive Kenneth Krueger and of James Hepper, a senior financial officer.

The Spokane bank and its related associations, with $2.7 billion in outstanding loans, also said it is considering seeking financial assistance available from the Agricultural Credit Act of 1987, in which Congress provided a $4 billion bailout to the national Farm Credit System.

Krueger had been with the bank for 23 years and had been president since January 1985. He could not be reached for comment and was not at the bank Tuesday. Hepper had been with the bank since 1964.

While praising Krueger for his leadership during difficult transitions and consolidations over the past few years, Feryn said the bank's directors wanted to move in a new direction.

He refused to cite a specific reason or incident that led to the dismissals, and said they were not ordered by Farm Credit System regulators.

Robert Matthews, who had been in charge of the associated Interstate Federal Land Bank and Production Credit Associations, was selected as acting president and chief executive effective Tuesday.

Matthews will be a candidate to permanently replace Krueger when the bank conducts a national search for a successor. Matthews headed Rainier National Bank's farm lending division before joining the Spokane bank last summer.

"We're trying to change the culture of the Farm Credit System," said Matthews. "We used to wait for the customer to come to us. Now we have to go to them."

The Farm Credit Bank of Spokane and its related Land Bank and Production Credit Associations reported a first-quarter loss in April of $2.8 million.

It earned $121 million in 1988 — but critics say an unusual accounting technique used by the Spokane bank and the national Farm Credit System may overstate profits.

The bank has said it is on the rebound after the 1987 federal bailout, but Tuesday Feryn and Mat-

(Continued on Page 2)

Farm

(Continued from Page 1)

thews said they are considering seeking financial assistance, merging district entities and reducing expenses.

The assistance would be in the form of a loan to replace high-cost debt. The amount of the loan and other specifics about the possible restructuring have not been determined, they said.

The Farm Credit Bank of Spokane operates in Washington, Oregon, Idaho, Montana and Alaska.

MAY 2 2 1989

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Attorney for Defendants Manning (FCS)
and Krueger (FCB)

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In the Consolidated Estates of:)
)
H. L. RICHES & SONS, INC.,) Case No. 387-02464-P11
WAYNE C. RICHES,) Case No. 387-02465-P11
CATHALEENE C. RICHES,) Case No. 387-02466-P11
JACK C. RICHES, aka JACK RICHES,) Case No. 387-02467-P11
CAROL L. RICHES,) Case No. 387-02468-P11
Debtors.)

H. L. RICHES & SONS, INC., an Oregon corporation; WAYNE C. RICHES; CATHALEENE C. RICHES; JACK C. RICHES; and CAROL L. RICHES,
Plaintiffs,

v.

GEORGE MANNING, et al.,
Defendants.

Adv. Proc. No. 88-0502

DEFENDANT'S MOTIONS TO DISMISS PLAINTIFFS' COMPLAINT AND MEMORANDUM IN SUPPORT

(Oral Argument Requested)

DATE OF HEARING:
TIME OF HEARING:

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V.

MOTIONS TO STRIKE

Defendants move to strike and/or, alternatively, make more definite and certain paragraphs 12(a), (b), (c), (d), (e), (f), (g) and (h) and paragraph 13. Defendants rely on the above argument, and the following as to plaintiffs' allegations:

(a) Plaintiffs do not allege what factors FCS failed to consider which are required under the statute, regulations and policy cited.

(b) & (c) Plaintiffs should allege how an explanation of the discount factor would have changed FCS's decision.

(d) Plaintiffs should allege how FCS failed to account for/or to consider the costs of foreclosure under the statutes, regulations and policy cited.

(e) Plaintiffs should allege what factors FCS failed to consider under the statute, regulations and policy cited.

(f) Plaintiffs should allege how FCS's policy fails to reflect Congressional intent as alleged.

(g) Plaintiffs should allege how FCS's policy is inconsistent as alleged.

(h) Plaintiffs should allege how FCS's policy violates the statute cited and the facts supporting the allegation that FCS has engaged in a practice of denying plaintiffs a right to restructure.

Paragraph 13

Plaintiffs should allege what defendant they claim paragraph 13 applies to. It fails to state a claim against FCB.

VI. CONCLUSION

For the reasons stated above, this court should discuss plaintiffs' complaint with prejudice and without leave to replead.

DATED this 19th day of May, 1988.

Respectfully submitted,

FOSTER PEPPER & SHEFELMAN

By: Jennifer Palmquist
Jennifer L. Palmquist, OSB #79342
Of Attorneys for Defendants
Manning (FCS) and
Krueger (FCB)

0334f

Rec'd
JUL 1 5 1988

Farm Credit Services

475 Cottage St. NE
P.O. Box 1009
Salem, OR 97308
364-2530

July 12, 1988

Honorable Senator Mark O. Hatfield
Room 114, Pioneer Courthouse
Portland, OR 97204

Honorable Senator Hatfield:

Thank you for your recent letter concerning H. L. Riches & Sons, Inc. You had asked that I inform you of the outcome of a credit review hearing which was scheduled for June 30, 1988.

Prior to the scheduled credit review hearing, we invited the Riches to meet and discuss an alternate proposal. This proposal would involve the restructuring of the Riches' loans at amounts equal to the liquidation value of the debts as established by Farm Credit Services. Additional security would be taken by Farm Credit Services. In the event property is sold in the future, proceeds from the sale exceeding the amount of the restructured debt would be remitted to Farm Credit Services up to what the legal investment would be if there had been no restructuring or compromise. This proposal would be subject to confirmation of a Chapter 11 bankruptcy plan.

We met with the Riches the morning of June 30, 1988 for discussion of this proposal. The final details of the proposal have not yet been worked out and final approval given by all interested parties. Attorneys for Farm Credit Services and the Riches are preparing the necessary documents for further consideration. In the meantime, the credit review hearing on the Riches' earlier restructuring application has been delayed pending consideration of this proposal. I believe we are close to completion of a restructuring program which may be in the best interest of both Farm Credit Services and the Riches.

Thank you for your interest in this matter. Please let me know if you have any questions.

Sincerely,

Bob Boyle

Robert J. Boyle
Manager - Special Credits

RJB:jk

cc: Dave Herrin, VP

CLERK, U.S. BANKRUPTCY COURT
DISTRICT OF OREGON

'89 MAY -5 P [illegible]

LODGED [illegible]

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Of Attorneys for Plaintiffs

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In the Consolidated Estates of:

H.L. RICHES & SONS, INC., Debtor. — Case No. 387-02464-P11

WAYNE C. RICHES, Debtor. — Case No. 387-02465-P11

CATHALEENE C. RICHES, Debtor. — Case No. 387-02466-P11

JACK C. RICHES, aka JACK RICHES, Debtor. — Case No. 387-02467-P11

CAROL L. RICHES, Debtor. — Case No. 387-02468-P11

H.L. RICHES & SONS, INC., an Oregon corporation; WAYNE C. RICHES; CATHALEENE C. RICHES; JACK C. RICHES; and CAROL L. RICHES, Plaintiffs, v. GEORGE MANNING as REGIONAL MANAGER, FARM CREDIT SERVICES, SALEM, OREGON; KEN KRUEGER as PRESIDENT and CHIEF EXECUTIVE OFFICER OF FEDERAL LAND BANK OF SPOKANE, aka FARM CREDIT SERVICES, FRANK W. NAYLOR, JR., as Chairman of the FARM CREDIT ADMINISTRATION; and the UNITED STATES OF AMERICA, Defendants.	Adversary Proceeding No. 88-0502(P) SECOND AMENDED COMPLAINT (Declaratory Judgment)

H.L. RICHES & SONS, INC., WAYNE C. RICHES, CATHALEENE C. RICHES, JACK C. RICHES AND CAROL L. RICHES (collectively the "Plaintiff Farmers") bring this action for DECLARATORY JUDGMENT against defendants. Plaintiff Farmers seek to enforce their rights under the Agricultural Credit Act of 1987 (the Act) for restructuring of a distressed loan with defendant Farm Credit Bank of Spokane, the lender. Plaintiff Farmers allege as follows:

PARTIES

1. The plaintiff H.L. Riches & Sons, Inc. is a corporation validly organized and in good standing under the laws of the State of Oregon.

2. Plaintiffs Wayne C. Riches, Cathaleene C. Riches, Jack C. Riches, and Carol L. Riches are individual farm borrowers with outstanding loans with the Federal Land Bank of Spokane aka

Farm Credit Services (FCS).

3. Defendant George Manning is the Regional Manager, FCS, Salem, Oregon. Defendant Ken Krueger is the President and Chief Executive Officer of the Farm Credit Bank of Spokane, aka FCS. Pursuant to 12 U.S.C. §§ 2011, 2012, 2031 and 12 C.F.R. § 611.400, FCS is a federally chartered body corporate and an instrumentality of the United States created to carry out the Congressional policy and objectives of the Act. FCS is an institution in the Farm Credit System that is so closely regulated by the federal government that its actions are subject to the Administrative Procedures Act and the due process clause of the Constitution.

Should be changed

4. Defendant Frank W. Naylor, Jr. is the Chairman of the Board and chief executive officer of the Farm Credit Administration (FCA), an independent agency in the executive branch of the United States Government. FCA is charged with the responsibility of regulating the Farm Credit System's institutions.

5. The United States of America is a sovereign governing the FCA and FCS.

JURISDICTION

6. This action arises under 12 U.S.C. § 2202 (Agricultural Credit Act) and 5 U.S.C. § 702 et seq. (Administrative Procedures Act). This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (Federal question); and has authority to grant the relief requested under 5 U.S.C. § 702, 28 U.S.C.

§§ 2201, 2202 (Declaratory Judgment Act), 28 U.S.C. § 1334 (Bankruptcy Cases and Proceedings) and Oregon District Court Local Rule 2100.

VENUE

7. This Court is a proper venue for this action pursuant to 28 U.S.C. § 1409, because one or more of the Defendants maintain offices in this district, the Plaintiff Farmers' cause of action arose, in whole or in part, in this district and the course of action arose in or is related to a case pending under Title 11 in this district.

FACTS

8. On March 30, 1988, Plaintiff Farmers applied for restructuring of certain of their loans with the Salem, Oregon District of the FCS. On June 3, 1988, by letter from Ken Long, a loan officer of FCS, FCS rejected Plaintiff Farmers' application. On June 13, 1988, Plaintiff Farmers filed a request for review of FCS' decision. By letter of June 24, 1988, the FCS loan officer affirmed the denial of the Plaintiff Farmers' application for restructuring of their loans.

9. Plaintiff Farmers' timely filed a request for review of the loan officer's decision. On October 11, 1988, the Credit Review Committee (CRC) of the FCS held a "hearing" to review the loan officer's denial of the Plaintiff Farmers' restructuring application.

10. On October 12, 1988, the CRC approved the loan officer's denial of the Plaintiff Farmers' restructuring

application.

ALLEGATIONS FOR DECLARATORY RELIEF ON PROCEDURAL GROUNDS

11. Plaintiff Farmers are entitled to relief because FCS violated their procedural due process rights in the following particulars:

(a) Prevented Plaintiff Farmers from allowing a court reporter to record the proceedings at the October 11, 1988 meeting of the FCS' Credit Review Committee even though 5 U.S.C. §§ 554, 556, 557 and 12 C.F.R. 614.4444 (53 Fed. Reg. 178, p. 35,453) requires that records of the meeting and the action taken be kept. FCS submitted minutes of its CRC hearing and Plaintiff Farmers informed FCS of the omission of relevant facts from the minutes. FCS refused to revise the minutes. It is implicit that accurate minutes must be kept. Had Plaintiff Farmers been allowed to record the proceeding, minutes that comply with the statute and the regulations would have been kept.

(b) Prevented Plaintiff Farmers from questioning FCS' witnesses regarding the evidence presented to the CRC contrary to 5 U.S.C. § 556(d).

(c) FCS supplied a copy of its Distressed Loan Restructuring Policy to Plaintiff Farmers. However, at the CRC hearing, FCS informed Plaintiff Farmers that FCS' policy and procedures would apply. FCS did not provide Plaintiff Farmers with a copy of the FCS policy and procedures. 12 C.F.R. 614.4516 (53 Fed. Reg. 178, p. 35,455) requires FCS to provide Plaintiff Farmers with a copy of the FCS policy and procedures. FCS violated the Act and the regulations by failing to provide this policy in advance of the CRC hearing. FCS should be required to provide Plaintiff Farmers with a copy of its policy and procedures prior to a CRC hearing.

(d) FCS allowed Robert Boyle to preside at the CRC meeting even though he had previously worked on the loans and restructuring application of Plaintiff Farmers contrary to 12 U.S.C. § 2202(a) and 12 C.F.R. § 614.4442.

(e) FCS prevented Plaintiff Farmers from interviewing members of the Credit Review Committee to establish possible bias. 5 U.S.C. § 556 requires decisions to be made in an impartial manner and if an affidavit of personal bias is filed, then a decision whether to disqualify the presiding employee must be determined on the record. The FCS prevented Plaintiff Farmers from making the determination whether they were going to receive an impartial hearing and FCS violated the Statute.

ALLEGATIONS FOR DECLARATORY RELIEF ON SUBSTANTIVE GROUNDS

12. Plaintiff Farmers are entitled to relief because FCS breached its statutory duties in the following particulars:

(a) FCS violated 12 U.S.C. § 2202a(e), 12 C.F.R. 614.4517 and its Distressed Loan Restructuring Policy (the Policy) Section III when FCS failed to consider the factors required by the statute, regulations and policy.

(b) FCS violated 12 U.S.C. §§ 2201, 2202, 2199, 12 C.F.R. § 614.4368 and its Policy Section VII when the basis for the discount factor applied was not provided Plaintiff Farmers despite their request for an explanation of the basis of the discount factor, how it was applied and how the credit status of Plaintiff Farmers could be improved to receive a lower rate on the loan.

(c) FCS violated 12 U.S.C. §§ 2201 and 2202, 12 C.F.R. §§ 614.4441 and 614.4443 and its Policy Section VII when FCS' failed to provide specific reasons for application of the discount factor it used;

(d) FCS violated 12 U.S.C. §§ 2201 and 2202, 12 C.F.R. § 614.4441, § 614.4512 and § 614.4443 and its Policy Section VII because FCS' rejection failed to account properly for the costs of foreclosure;

(e) FCS violated 12 U.S.C. § 2202a, 12 C.F.R. § 614.4517 and its Policy Section VII by failing to consider the statutorily required factors;

(f) FCS violated 12 U.S.C. § 2001 and 12 C.F.R. § 614.4515 because its policy fails to reflect the Congressional intent or "sense of Congress" of providing that borrowers derive the greatest benefit practicable from the Act.

(g) FCS violated 12 U.S.C. § 2202a(g), 12 C.F.R. 614.4515 and 5 U.S.C. § 5.51, et seq., when it adopted its Policy because the policy is inconsistent with Section 2202a;

(h) FCS violated 12 U.S.C. § 2001 in the implementation of its Policy because the policy violates the sense of Congress set forth therein and FCS has engaged in a practice of denying Plaintiff Farmers the right to restructure by violating the Act.

13. Plaintiff Farmers have exhausted all available administrative remedies. FCA failed to carry out the policies and objectives of the Act in violation of 12 U.S.C. § 2252 by failing to adequately regulate FCS' implementation of the Act.

14. There is a genuine and judicial controversy among the parties concerning the interpretation of and limitations upon FCS' actions contained in the statute, the regulations and its Distressed Loan Restructuring Policy.

WHEREFORE, Plaintiff Farmers pray for judgment and order:

1. Declaring that defendant FCS has violated Plaintiff Farmers' procedural due process rights and the APA;

2. Declaring the acts of defendant FCS in denying Plaintiff Farmers' application for loan restructuring were and are a violation of 12 U.S.C. §§ 2001, 2201, 2202, 2202a;

3. Ordering defendant FCS to reconsider restructuring of the Plaintiff Farmers' loans pursuant to 12 U.S.C. § 2001 _et seq._;

4. Declaring that defendant FCA has failed to carry out the policies and objectives of the Act in violation of 12 U.S.C. § 2252; and

5. For such other relief as the Court may deem just and equitable.

DATED: May 5, 1989.

SCHWABE, WILLIAMSON & WYATT

By:
John G. Crawford, Jr.
OSB #73067
Of Attorneys for Plaintiffs

Filed
5/1/90

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Attorney for Farm Credit Bank of Spokane

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In the Consolidated Estates of:

M. L. RICHES & SONS, INC., Debtor. — Case No. 387-02464-P11

WAYNE C. RICHES, Debtor. — Case No. 387-02465-P11

CATHALEENE C. RICHES, Debtor. — Case No. 387-02466-P11

JACK C. RICHES, aka JACK RICHES, Debtor. — Case No. 387-02467-P11

CAROL L. RICHES, Debtor. — Case No. 387-02468-P11

FCB'S OBJECTION TO DEBTORS' FOURTH MODIFIED CONSOLIDATED PLAN OF REORGANIZATION

Farm Credit Bank of Spokane ("FCB"), successor by merger to The Federal Land Bank of Spokane, objects to Debtors' Fourth Modified Consclidated Plan of Reorganization and Modification thereto as follows:

1. FCB will not receive under the Plan deferred cash payments of a value as of the effective date of the Plan, equal to the allowed amount of its claims; and

2. FCB will not receive or retain under the Plan an account of its claim or interests in Debtors' property a value, as of the effective date of the Plan that is not less than the amount that it would receive if the debtor were liquidated under Chapter 7; and

3. Confirmation of Debtors' proposed Plan is likely to be followed by the liquidation or need for further financial reorganization of the Debtors.

4. Debtors' Plan is not fair and equitable.

If Debtors seek confirmation under § 1129(b), they fail to meet the qualifications thereunder. Particularly, FCB objects to Debtors' Plan on these specific grounds:

A. Amount of Secured and Unsecured Claims. FCB objects to amount of its claims in Class 10, 12A, 12B, 12C, 12D and 13C. FCB has requested a valuation hearing to determine the value of the collateral held for FCB's claims.

B. Market Rate of Interest/Post-Petition Interest. Debtors' proposed treatment of FCB claims 10, 12C and 12D fails to provide FCB with the market rate of interest on the deferred payments under Debtors' Plan. Debtors proposed treatment fails to provide for payment of post-petition interest on FCB's claims.

C. *Restructuring*. FCB objects to Debtors proposed restructuring of FCB's loans and incorporates the points and authorities in its motion to dismiss *Riches v. Manning* herein.

D. *Stock*. FCB objects to Debtors proposal to cancelled stock as provided in the Agricultural Credit Act of 1987, under Class 10, 12C and 12D.

E. *Term of Loan*. FCB objects to the proposed 30 year loan period.

F. *Credit of Payments*. FCB objects to Debtors proposed allocation of payments made under the cash collateral order to principal and interest based upon a 30 year amortized schedule on the principal balance of the claims in Class 10, Class 12C and Class 12D.

G. *Liquidation Value*. Debtors' liquidation analysis is inaccurate. FCB would receive more in a Chapter 7 liquidation than under Debtors' Plan. FCB is entitled to post-petition interest on its claims.

H. *Feasibility*. Debtors' Plan is not feasible. Debtors will be unable to generate sufficient income to service debt as provided for under their Plan.

I. *Unsecured Claim*. Debtors improperly classified FCB's unsecured claim 13C as contingent. Debtors fail to provide for the contract or market rate of interest on the proposed deferred cash payments. Debtors fail to provide for payment of post-petition interest on this claim.

FCB objects to Debtors proposed payment of its unsecured claims pursuant to a 22 year 10.5% per annum registered note and an 18 year 10.5% per annum registered note, as to their terms and provisions. Specifically, FCB object to Debtors' proposal to pay interest only and to defer principal. Debtor will retain substantial unencumbered equity in real property which can be pledged to others after confirmation of Debtors' plan, thereby leaving FCB unable to realize on its unsecured or potential deficiency claims. FCB objects to deferral of payments on the unsecured claims until resolution of Riches v. Manning.

J. Loan Documentation and Cross Default. FCB objects to the modification of its loan documentation. Debtors default on any of FCB's claims should constitute a default under the Plan as to all claims.

DATED this 1 day of May, 1989.

Respectfully submitted,

FOSTER PEPPER & SHEFELMAN

By: Jennifer Palmquist
Jennifer L. Palmquist, OSB #79342
Attorney for Farm Credit Bank
of Spokane

0374f

CERTIFICATE OF SERVICE

I hereby certify that, on this date, I served the foregoing FCB'S OBJECTION TO DEBTORS' FOURTH MODIFIED CONSOLIDATED PLAN OF REORGANZITION by hand delivering to the offices of:

John G. Crawford
Schwabe, Williamson & Wyatt
Suites 1600-1900, Pacwest Center
1211 S.W. Fifth Avenue
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Attorney for Debtors

Pamela J. Griffith
Suite 1300
851 S.W. Sixth Avenue
Portland, OR 97204

U.S. Trustee

DATED this 1st day of May, 1989.

FOSTER PEPPER & SHEFELMAN

By: Jennifer Palmquist
Jennifer L. Palmquist, OSB #79342
Attorney for Farm Credit Bank of Spokane

PREPARED STATEMENT OF CHERYL L. COOK, ESQ., LEGISLATIVE ANALYST, NATIONAL FARMERS UNION, WASHINGTON, DC

Thank you, Mr. Chairman. My name is Cheryl Cook, and I am here this morning on behalf of the National Farmers Union, a general purpose farm organization representing nearly 300,000 families in 26 States. I appreciate the opportunity to be here this morning to share our concerns on the implementation of the Agricultural Credit Act of 1987 by institutions of the Farm Credit System.

I will begin with the most visible of those institutions, which is the System's regulator, the Farm Credit Administration (FCA). We are very concerned that FCA has been operating without a quorum on the board for months. There are too many important issues facing the Farm Credit System—from consolidations and mergers to debt restructuring to the issuance of Farmer Mac's underwriting standards—to allow this situation to continue.

The Agricultural Credit Act of 1987 was a very complex statute, and for the last 5 months, the regulatory agency charged with ensuring proper implementation has been unable to act. With final regulations having been issued in mid-September, standards for supervision were in place barely 100 days before the supervising agency was put "on hold."

Just over 1 year ago, the Farm Credit Administration had sent its proposed regulations to Congress for review. At the same time, the House Appropriations Committee held a hearing with the members of the FCA board. I plan to refer to passages from that April 21, 1988 hearing throughout my testimony, but I would like to start with a brief exchange that took place between Mr. Marvin Duncan and Representative Wes Watkins:

"Mr. Duncan: We, the regulator, are moving as quickly as we can to get in place the regulations that will assure that everybody knows what the ground rules are with regard to borrower rights and loan restructuring. Each of us as board members has been saying in public statements ever since the legislation was passed, including yesterday morning at a House Agriculture Committee hearing, that it is our expectation that the Farm Credit System institutions will abide by the letter and the intent of the law——

"Mr. Watkins: Are you handing down to them the letter and intent? Are all districts following the uniform practice regarding competitive bids?

"Mr. Duncan: No sir. My understanding is there is some difference, but I think that perhaps it would be——

"Mr. Watkins: How can the letter and the intent be followed by law if we allow differences in regulation interpretation? Somewhere we're going to need to follow the letter and intent of the law. We're going to need it uniform. Do we interpret it one way on this side of the table and different on the other side of the table?

"Mr. Duncan: No sir. For us to take enforcement actions, we have to get regulations in place.

"Mr. Watkins: I understand" (hearing transcript, page 596).

One of several additional questions which Mr. Watkins submitted for the record received the following response:

"Mr. Watkins: Last week the FCA board approved regulations concerning borrowers' rights. Are those regulations written in such a manner that each district will know exactly how borrowers' rights should be interpreted and can be uniformly applied to each individual borrower in each district?

"Response: The proposed regulations closely follow the statute" (hearing transcript, page 604).

Mr. Chairman, I am sure you have seen FCA's final regulations on borrowers' rights. And I am also sure you have noticed that the regulations not only closely follow the statute, they are the statutory language nearly verbatim, with two exceptions which I will discuss in a moment. The language of the Agricultural Credit Act of 1987 relied on forbearance language that had evolved in FCA's previous regulations, and is therefore more specific than legislative language tends to be. I concede that FCA did not need to make as many judgment calls of interpretation in title I of the act as it did for some of the other titles. But, we have a system in place now in which the new regulations are virtually identical to the statute which was based on the old regulations—where is the progress in all of this?

While there were not as many places where the regulator's interpretation was necessary in the borrowers' rights sections as there were in the System restructuring sections, for example, there were some areas which, in our opinion, needed further clarification from the System's enforcement agency. In the two areas to which I alluded earlier, we believe that FCA misinterpreted congressional intent. In several other areas, FCA failed to provide any statutory interpretation, or any other guidance for the districts.

The first area in which FCA went beyond the letter of the act—and we believe in the wrong direction—is in the definition of a "distressed loan." Section 614.4440(e) of the regulations defines a distressed loan to be "a loan for which the borrower does not have the financial capacity, *as determined by the lender*, to pay according to its terms and which exhibits one or more of the following characteristics:

(1) The borrower is demonstrating adverse financial and repayment trends;

(2) The loan is delinquent or past due under the terms of the loan contract; and

(3) One or both of the factors listed in paragraphs (e) (1) and (2) of this section, together with inadequate collateralization, present a high probability of loss to the lender." (Italics added.)

This definition is identical to the statute, with the exception of the underlined clause, "as determined by the lender." One of the distinct advantages which the statutory language on restructuring System loans has over restructuring Farmers Home Administration (FmHA) loans is the concept that a loan can be distressed, i.e. the negotiative, interactive restructuring process can begin, as soon as a problem is recognized—even before the first payment is actually missed. FmHA's provisions don't require restructuring processes to begin until the borrower is 180 days past due. Obviously, the sooner a problem can be addressed, the easier and cheaper it will be for everyone. We object to any efforts to limit a borrower's ability to step forward and ask for help when he knows that he's got a problem. The lender isn't likely to know of a potential repayment problem until a payment is actually missed—the borrower will know in time to keep a payment from being missed.

The second area in which we believe FCA did not follow congressional intent is the issue of where public auctions fit into the process of a prior owner's right of first refusal on acquired property. Section 4.36(b)(1) of the act clearly states that when a lender "*first* elects to sell acquired real estate," the borrower is to be notified and offered a chance to repurchase at fair market value. (Italics added.) Section 4.36(d)(1) deals specifically with sales by public auction, but that subsection does not refer to the *first* election to sell. We believe that Congress intended for a prior owner to have the first opportunity to repurchase acquired property at fair market value. If that were impracticable, and the lender *then* elected to sell by public auction, the prior owner should be allowed to attend the auction and match the highest bid. Instead, section 614.4522 of the regulations gives the lender the choice between using the private sale with the right of first refusal and using a public auction. We disagree with this interpretation of the law.

On a related matter, the act states that a System institution cannot sell a property to a third party for a lower price or more favorable terms or conditions than were offered to the prior owner without going back to the prior owner for an opportunity to match the offer. FCA's regulation restates the law, but adds a paragraph (614.4522(c)(4)) stating that System institutions do not have to offer financing to the prior owner and that System financing of a third party is not to be considered a different term or condition. We concur that the System should not be forced to lend to someone who is patently unable to meet his or her loan payments simply because he or she is a prior owner. But to suggest that financing is not a term or condition of a sales contract is absolutely ridiculous.

What got many Members of Congress interested in including the right of first refusal in the act was the practice used by many System institutions of kicking a farmer off the land and then turning around and selling it to someone else at a lower interest rate—which, had it been offered to the original borrower, would have allowed him or her to stay on the land and in the community. We would urge close monitoring of System institutions to determine the number of acquired properties ultimately sold to third parties with System financing. This section should not be used as a loophole around the right of first refusal.

There are several other instances in which FCA could have saved everyone time and trouble by interpreting the law and providing guidance to both System institutions and borrowers. For example, section 614.4440(c) should have included a definition of a preliminary restructuring plan as opposed to an application for restructuring. At what point do the negotiations start and stop? What financial information is necessary before the plan is considered complete? Section 614.4442 should have included a better framework for the newly expanded credit review committees. Who is eligible to serve beyond the required farmer board representation? How can they be kept independent of the institution to the point that they don't act simply as a rubber stamp? In sections pertaining to act sections that were clear and detailed, instead of repeating the statutory language in the regulation, FCA should have saved everyone time by providing model forms, for example a model disclosure form for use on loans which the lending institution may wish to sell into the secondary market.

In cases where Congress left the act flexible or unintentionally ambiguous, FCA's refusal to provide guidance to System institutions and their borrowers have left no alternative but the remaining branch of government—the courts. Let me return to last year's House Appropriations Committee hearing for another of Mr. Watkins' questions supplied for the record:

"Mr. Watkins: The Federal Land Bank of St. Louis has brought suit against a borrower to determine whether foreclosures 'in the pipeline' are covered under the Agricultural Credit Act. Section 4.14A(b)(3) of the Farm Credit Act of 1971, as amended, clearly states that the lender may not continue any foreclosure proceeding until it has completed consideration of restructuring under that section, which includes 45 days' notice and the right to a meeting. Particularly given the fact that borrowers were denied the right to sue FCS institutions, except in limited circumstances, does FCA view the St. Louis suit as a violation of congressional intent? Couldn't FCA have avoided this litigation by proposing regulations?

"Response: The FCA has acted to propose borrower rights regulations and schedule a public hearing on them as soon as possible . . . . System institutions are responsible for interpreting applicable statute and regulation and complying with them. The expense and uncertainty of protracted litigation over any section of the 1987 act may unfortunately increase overhead costs to all System borrowers, which should be a consideration to the elected directors of those System institutions involved in litigation" (hearing transcript, page 607).

My point is simply this, Mr. Chairman. FCA certainly could have avoided litigation on the pipeline question and several other issues, had the agency issued regulations that provided interpretation and guidance instead of repeating statutory language in regulations that didn't add anything to anyone's understanding of what they had to do to be in compliance with the law. We find their warning on unnecessarily increasing System institutions' overhead costs to be somewhat unbelievable given the amount of extra work and extra costs which FCA itself caused System institutions in interpreting the act for themselves.

Borrowers, too, were given little guidance by FCA's regulations and, as Representative Watkins indicated, borrowers' access to the courts has been extremely limited. H.R. 3030, as originally passed by the House, included a provision clarifying that borrowers did have standing to bring a private right of action against a System institution. That provision was dropped by the conference committee.

The Farm Credit System is a network of private lending institutions, and we recognize that there's a limit to how far Congress can go in micromanaging the activities of the banks and associations. But, given the degree of discretion in interpretation left to individual districts both by the act and FCA's regulations, we believe that borrowers must have access to the courts. Congress cannot solve every individual problem with borrowers' rights. But, what Congress can do is make sure that individuals have the ability to protect themselves with a clear right of action that includes the ability to recover attorneys' fees in successful cases.

While it appears that the System overall is improving financially, we have several particular concerns with regard to the additional requirements placed on districts which have received financial assistance.

First, while debt restructurings ordinarily begins only after application by the borrower, recipients of financial assistance are required by section 4.14C(a) of the Farm Credit Act of 1971, as amended, to review each nonaccrual status loan that has not been restructured to determine suitable candidates. We would like clarification from the Jackson district receiver and the Louisville, Omaha and St. Paul districts on how many of those reviews are complete and what the results have been. We would like some basis for comparison on the number of successful debt restructurings in the other districts.

Second, districts which have received financial assistance are required by section 4.14C(b) of the act to establish special asset groups, which are to review denied applications for restructuring. The special asset groups are to have the ability to overturn the denial although, unfortunately, the act does not prevent the lending institution from selling off the loan collateral prior to the completion of the special asset group's review. While we understand the lender's need to protect itself from possible fraudulent asset transfers, we are concerned that the special asset group's decision could result in little more than a moral victory for the borrower if a restructuring denial is reversed after the loan collateral is gone. We have seen no indication from the districts certified to receive financial assistance as to what decisions have been made by special asset groups. Similarly, we would like to know the results from the National Special Asset Council, which is to randomly review decisions made by the special asset groups.

Third, section 613 of the Agricultural Credit Act of 1987 sets up a limited pilot program to help FmHA eligible borrowers purchase System inventory properties in districts which have been certified to receive financial assistance. The snail's pace with which the program regulations were put into place has been thoroughly discussed in past hearings. We would raise the issue again because of the timeliness of measures designed to repopulate rural America. If we are serious about rural development, we need to make better use of programs that are already in place.

Fourth, we are concerned with the purposes for which it appears Farm Credit System districts have requested financial assistance. Section 6.5(c)(2) of the Farm Credit Act of 1971, as amended, provides that an institution eligible to issue preferred stock may do so in order to strengthen itself to the point of offering reasonable and competitive interest rates. We fully understand the public relations advantage in being able to say that the System doesn't need nearly as much assistance as was authorized. We also understand that last year some institutions were accused of predatory pricing by commercial lenders unused to competition. But, the steady stream of financially sound borrowers out of the System was a primary reason for the Agricultural Credit Act, and particularly for this type of assistance. We are concerned that by not using this section eligible institutions (for now, in Louisville and St. Paul) will ultimately shoot themselves in the foot. By allowing the best customers to go elsewhere for a better interest rate, the financial soundness of remaining loans would increase the possibility of needing greater financial assistance to maintain stock values.

Finally, I would like to turn for a moment to the Federal Agricultural Mortgage Corporation, or Farmer Mac. Farmers Union supported the creation of Farmer Mac in 1987, on the basis that family farmers should have access to long-term, fixed (and hopefully lower) interest rate real estate loans. We continued to support the idea even after Farmer Mac—which is an entity of the Farm Credit System—was excused from most borrowers' rights provisions. I have yet to understand why Farmer Mac should not have to use its least cost alternative to resolve a loan default, but that is beside the point. Section 8.9(a)(1) of the Farm Credit Act of 1971, as amended, which is where the borrowers' rights exemption is found, also includes a sentence which we were able to get into the Senate bill, and which fortunately survived the conference process. It says, "The loan servicing standards established by the Corporation shall be patterned after similar standards adopted by other federally sponsored secondary market facilities." Section 8.5(a)(1) of that act requires the Corporation to establish its standards for certification of agricultural mortgage marketing facilities (poolers) within 120 days of the permanent board's first meeting with a quorum. Section 8.5(a)(2)(E) requires poolers to adopt "mortgage loan underwriting, appraisal, and servicing standards and procedures that meet or exceed the standards established by the Board." Subparagraph (G) requires poolers to "adopt appropriate minimum standards and procedures relating to loan administration and disclosure to borrowers concerning the terms and rights applicable to loans for which guarantee is provided, in conformity with uniform standards established by the Corporation."

In other words, the Farmer Mac board must issue standards for poolers, covering at least loan underwriting, appraisals, loan servicing or administration (which must be based on other secondary markets) and disclosures to borrowers. Mr. Chairman, I have attached to my testimony copies of some of the servicing standards used by Fannie Mae and Freddie Mac. They include such things as working with borrowers to avoid default, face to face meetings, temporary forbearance for a good faith borrower, and the like. We support the use of such ideas in Farmer Mac's standards, and ask for your help in overseeing the standards development process.

Thank you again for the opportunity to express our concerns. I would be happy to answer any questions you might have at this time.

[Attached material, Fannie Mae and Freddie Mac—Servicing Guide, follows:]

[¶ 27,639]

Chapter 4. Delinquencies

Servicers must establish a system for servicing delinquent mortgages that follows the accepted standards used by prudent lenders. The Servicer's system must include, at least, the following:

- an accounting system that immediately alerts the appropriate department that a mortgage is delinquent;
- a collection department staff that is familiar with all HUD, VA, MI and Fannie Mae procedural and reporting requirements,
- counselling procedures to advise mortgagors how to avoid or to cure delinquencies,
- guidelines for the individual analysis of each delinquency;
- instructions and adequate controls for sending delinquent notices, assessing late charges, returning partial payments, maintaining collection histories, reporting delinquencies to credit bureaus, etc.;
- management review procedures to evaluate both the mortgagor's actions and the Servicer's collection efforts before a final decision is made to accept some form of repayment arrangement or to start liquidation proceedings, and
- a method for comparing the Servicer's own delinquency and foreclosure ratios with those of others in the industry.

§ 401 Collection Techniques

The purpose of all collection efforts is to bring the account current at once. Servicers will determine the most effective form of contact with specific mortgagors during the various stages of delinquency. The Servicer must document all collection efforts in its permanent mortgage files.

It is particularly important to address a one payment delinquency immediately to prevent it from becoming more serious. An early determination of the reason for the delinquency gives the Servicer and the mortgagor time to arrange an acceptable method for curing it. And if an agreement cannot be reached, the mortgagor will have to try to sell the property.

We expect Servicers to employ a variety of collection techniques. At a minimum, the Servicer's collection procedures must provide for the following.

A. Late notices. There are two types of late notices. A *payment reminder notice* should be mailed between the seventh and tenth days of the delinquency to inform the mortgagor that a late charge will be assessed if the payment is not received by the 16th day after it is due. This reminder notice is particularly important to promote good paying habits for new mortgagors. Then, if the payment has not been received by the 17th day after it is due, a *late payment notice* should be sent to the mortgagor. That notice should state the amount of late charges that are due.

B. Phone calls. Phone calls are inexpensive and are highly effective when used properly. Generally, the Servicer should begin its telephone contacts between the 17th and 20th days of the delinquency, but earlier contact—between the seventh and tenth days of the delinquency—may be warranted for habitual delinquents. When talking to the mortgagor, the Servicer should emphasize the importance of making payments as they come due. If the mortgagor has a legitimate reason for not having made the payment, the Servicer should try to get the mortgagor's commitment to bring the mortgage current as soon as possible. If appropriate, the Servicer should discuss the types of relief that are available.

C. Letters. Form letters may be useful under certain circumstances. However, an individually written letter may be a more effective collection technique than a form letter—certainly it emphasizes how serious a delinquency can be. This is especially true when habitual delinquents are involved. Individual letters are the preferred approach after the 20th day of the delinquency.

D. Face-to-face interviews. The Servicer should have a face-to-face interview with the mortgagor between the 50th and 60th days of the delinquency. These efforts must be consistent with industry practice and government regulations. A Servicer should use its judgment to determine whether additional face-to-face interviews with the mortgagor are necessary. The Servicer must make every reasonable effort to have a least one face-to-face interview with the mortgagor before beginning any foreclosure proceedings.

§ 402 Ways to Prevent or Cure Delinquencies

The Servicer must analyze each delinquent account to determine:

- the reason for the default,
- whether the reason is a temporary or permanent condition; and
- the mortgagor's attitude toward the debt.

Mortgagors who are experiencing temporary hardships may have difficulty making their mortgage payments. Servicers should make every effort to assist mortgagors who are cooperative, acting in good faith, and willing to work out a way to prevent or cure their delinquency. This section discusses some methods that may be used in those situations. The Servicer must determine which approach will be the most effective based upon the individual circumstances.

§ 402.01 Assessing Late Charges (also see Section 101.03 and Part I, Section 203.03)

Imposing late charges to help prevent delinquencies is most effective when the mortgagor is able to pay on time but does not do so. It may not be effective as a collection tool when the mortgagor is simply unable to make the payment because of some unforeseen circumstances.

When the Servicer receives a payment that does not include the required late charges, the Servicer's handling of the payment depends on the type of mortgage involved and the situation as the Servicer perceives it.

The Servicer may defer late charges to a future date. However, the Servicer cannot foreclose the mortgage later if the only delinquent amount is unpaid late charges.

If the Servicer is considering return of the payment to the mortgagor, these guidelines should be used.

- For VA and *conventional mortgages*, the Servicer may return the payment if it determines

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that the mortgagor was able to pay on time but failed to do so.

- For FHA *mortgages*, the Servicer must process the payments in accordance with HUD's requirements.

In certain hardship cases, the Servicer should consider waiving late charges all together.

§ 402.02 Accepting Partial Payments (also see Section 101.03)

The Servicer should accept a partial payment, and hold it as "unapplied funds", if the mortgagor

- has a good attitude toward the mortgage obligation,
- is not habitually delinquent,
- does not have a history of remitting NSF checks, and
- can pay the balance of the payment within the next 30 days.

As a rule, a Servicer should accept partial payments only to help cure a delinquency. It should return partial payments when it believes that this action will be an effective collection tool. However, we do not want the Servicer to return partial payments routinely. In addition, HUD and VA require that partial payments be accepted under certain conditions that they specify.

If a mortgagor indicates that he or she will not be able to make full payments on a continuing—but temporary—basis, the Servicer should determine whether some sort of relief provision could be used to bring the account current or at least to keep the delinquency from getting worse.

§ 402.03 Using an Attorney to Collect Payments

When a mortgagor has a history of delinquencies, the Servicer may use an attorney to collect delinquent payments if at least two are past due. The Servicer may require the mortgagor to pay the attorney's fees unless local law of the mortgage insurer or guarantor prohibits collecting the fee from the mortgagor. If that is the case, the Servicer must pay the attorney's fees.

Because the use of an attorney for collection purposes is at the Servicer's discretion, the Servicer is fully responsible for any consequences that result from its decision to collect delinquent payments in this manner.

§ 402.04 Obtaining an Assignment of Rents

Unless we direct otherwise, the Servicer of a delinquent mortgage secured by property that is being rented should try to collect the rental income to apply toward the delinquency if

- other arrangements to repay the delinquency cannot be made;
- the mortgage provides for an assignment of rents;
- local law allows the mortgagee to collect rents under these circumstances; and
- this action will not create any new rights for the occupant that might impair our ability to foreclose the mortgage at a later date.

Any rental income that is collected on a delinquent mortgage should be applied first to outstanding advances and reimbursable expenses, then to scheduled monthly installments.

§ 402.05 Reapplying Principal Prepayments

In some cases, mortgagors may have made additional principal payments toward their accounts at some time in the past. Servicers may reapply these principal prepayments to cure a delinquency if

- the mortgagor submits a written request,
- the reapplication of the principal prepayment does not result in the mortgage balance being higher than it would have been had the original amortization schedule for the mortgage been followed, and
- the mortgagor agrees to submit any additional funds that are needed to supplement the prepayment so that the total delinquency can be cured. If the mortgagor cannot raise the additional funds, the Servicer may combine the reapplication of a principal prepayment with a relief provision.

§ 402.06 Listing the Property for Sale or Rental (also see Section 404)

If the reason for the mortgagor's delinquency appears to be permanent, the Servicer may suggest that the mortgagor sell or rent the property. This would allow the mortgagor either to pay the mortgage off or to reduce the delinquency. The Servicer should suggest that an agent be appointed to collect any rents, unless we have issued instructions to the contrary.

Any rental income that is collected should be applied first to outstanding advances and reimbursable expenses, then to scheduled monthly installments.

§ 403 Special Relief Provisions (also see Section 406)

We have several types of special relief provisions to help deserving mortgagors who are delinquent. The Servicer must be familiar with the terms of each of these provisions. The Servicer should also be aware of any government programs that might assist mortgagors in resolving their delinquencies or of any counselling agencies that might help mortgagors in their debt management.

We want the Servicer to use our relief provisions whenever their use is appropriate. We do not want to liquidate a mortgage if there is any chance of saving it. But, we do not expect the Servicer to grant relief unless it will result in bringing the mortgage current and keeping it that way.

Early in the delinquency, the Servicer should contact the mortgagor to determine his or her attitude toward the delinquency. If the Servicer believes that the mortgagor should be granted relief, it should

- explain our relief provisions and the mortgagor's responsibilities under each;
- obtaiin any financial information that will be needed to develop the repayment plan, and
- stress the consequences of not meeting the terms of a repayment plan to make sure that the mortgagor has a complete understanding of the agreement he or she is about to enter into.

The Servicer should analyze each case carefully before developing a repayment plan. The Servicer should have a face-to-face interview with the mortgagor before a formal relief plan is executed. How-

[¶ 27,665]

Chapter 65—Home mortgage and second mortgage/HIL servicing: delinquencies and relief to borrowers

§6501 Dealing with delinquencies; general Freddie Mac requirements

This chapter presents servicing requirements for dealing with delinquencies of mortgages in which Freddie Mac has an interest The Servicer is responsible for developing collection procedures that best meet these servicing requirements. These procedures must be adequate and efficient for promptly dealing with delinquencies Freddie Mac retains the right to impose additional requirements as Freddie Mac deems appropriate

The Servicer's staff must be sufficiently skilled in financial counseling and mortgage servicing techniques to assist borrowers in bringing their mortgages current and protecting their equity and credit rating, while also protecting Freddie Mac's interests. The purpose of all collection efforts is to bring the account current in the shortest time.

Discussions with the borrower must include a determination of the cause of the delinquency and an attempt to obtain a definite commitment from the borrower to bring the acccount current If the account cannot be brought current immediately and the borrower's circumstances and past record justify it, the Servicer should attempt to cure the delinquency in the shortest period possible by using the relief provisions discussed in sections 6510-6514

(a) Collection efforts. The Servicer must treat each delinquency individually. The collection effort must be based on the Servicer's knowledge of the borrower's credit history, employment situation, individual circumstances and property, the extent of the delinquency, and, in the case of a second mortgage/HIL, the status and unpaid principal balance of any superior lien The Servicer is expected to use notices, letters, telegrams, telephone and face-to-face contacts, and other responsible collection techniques used by prudent mortgage servicers. The Servicer must vary its collection techniques to fit individual circumstances and to avoid establishing a fixed routine, which may become ineffective for dealing with repeatedly delinquent borrowers The Servicer must recognize that efficient servicing of a delinquent mortgage relies heavily on personal contact, both on the telephone and face to face with the borrower. Form letters and notices, while having a place in any servicing program, generally are not as effective as personal contact and must not be used exclusively. The Servicer is encouraged to review its servicing procedures with the applicable Freddie Mac regional office for possible suggestions regarding servicing techniques; this does not, however, relieve the Servicer from the full responsibility of developing and maintaining a satisfactory servicing program.

(b) Acceptable delinquency rates. The Servicer's continued participation in Freddie Mac's programs is contingent upon maintaining delinquency rates that are acceptable to Freddie Mac Freddie Mac expects the Servicer to maintain delinquency rates on mortgages in which Freddie Mac has an interest at a level below or comparable with other Freddie Mac Servicers servicing mortgages of the same type in the same general geographical area.

† **(c) Collection records.** The Servicer must maintain an individual file for each mortgage as outlined in section 6204

The Servicer must also maintain adequate records of collection efforts and make the records available for Freddie Mac's inspection on request At a minimum, the records must show

- the dates that letters and notices were mailed
- results of conversations with the borrower
- dates of personal contracts
- dates and results of property inspection
- reasons for prior and current defaults

§6502 FHA, VA, and MI requirements

The Servicer must be familiar with and satisfy all applicable requirements of the FHA, VA, or MI The Servicer is expected to have adequate controls to assure timely filing of all notices to the FHA, VA, or MI Copies of routine notices sent to the FHA, VA, MI, or the borrower need not be sent to Freddie Mac unless specifically requested

All notices to the MI must identify Freddie Mac's loan number assigned to and its percentage of participation in the related mortgage(s)

§6503 Buydown funds

Funds in a buydown account may not be automatically used to bring a delinquent account current Such funds may be applied for this purpose if the borrower so consents when the application of funds is sought.

§6504 Delinquent new borrowers

Particular attention should be paid to delinquency on the part of a new borrower. The reasons for delinquency by a new borrower vary and may include the borrower's misunderstanding of payment requirements The Servicer should make personal contact with a new borrower by the 15th day of delinquency to determine the cause of delinquency and to emphasize the importance of payment on or before the due date.

† When foreclosure action on a mortgage results from a delinquency that began within four months of the origination date Freddie Mac will presume that the mortgage was not of investment quality, as defined in sections 1209 of this guide, when sold to Freddie Mac, Freddie Mac will require the Seller to repurchase such mortgage in accordance with section 6208 This action on Freddie Mac's part does not constitute enforcement of the recourse provisions applicable to mortgages purchased by Freddie Mac with recourse, nor does it constitute an extension of recourse provisions to mortgages purchased by Freddie Mac without recourse. Freddie Mac will rescind its repurchase demand if the Seller demonstrates to Freddie Mac's satisfaction that the mortgage was prudently underwritten and documented in accordance with applicable provisions of this guide To request rescission of a Freddie Mac repurchase demand, the Seller must deliver to the applicable Freddie Mac regional office, within 10 business days of the date of the demand, a written request accompanied by the documentation specified in section 2520.

§6505 Early delinquency servicing program

At a minimum the following actions must be taken within the first 45 days of delinquency

- Identification of a delinquent mortgage is made by the 15th day of delinquency
- A late notice is mailed between the 16th and 18th day of delinquency
- Attempts to contact the borrower by telephone begin approximately five days after mailing the late notice

If satisfactory arrangements to bring the account current have not been made by approximately the 45th day of delinquency, a face-to-face interview with the borrower is conducted. If a satisfactory response is not obtained, the Servicer continues to follow up with notices, letters, telephone contacts, face-to-face interviews, etc., until the mortgage has been brought current or until the Servicer determines that recommendation for foreclosure, deed in lieu of foreclosure, or other action is appropriate.

§ 6506 Interview with borrower; property inspection

Before the 60th day of delinquency the Servicer must attempt to interview the borrower, preferably face to face, to establish the following:

- the cause of the delinquency
- whether the cause is temporary
- the attitude of the borrower toward the debt
- a mutually satisfactory arrangement for curing the default

For second mortgages HILs, the Servicer must contact all known superior lienholders to determine:

- the status and unpaid principal balance of each superior lien.
- whether any mortgage constituting a superior lien has been sold to Freddie Mac.
- whether the borrower is also delinquent under a superior lien and what the affected lienholder intends to do to resolve the delinquency.

If the Servicer is unable to obtain the borrower's agreement to a repayment plan, or if a repayment plan is breached, the mortgaged premises must be inspected to determine their physical condition and occupancy status before recommending further servicing action. Such inspection must take place before the 60th day of delinquency and every month thereafter until satisfactory repayment arrangements have been made.

Since visits to the mortgaged premises also provide opportunities for face-to-face contact with the borrower, Freddie Mac does not consider drive-by inspections to be sufficient. However, there may be circumstances (personal risk to the inspector, legal constraints, etc.) under which a drive-by inspection would be appropriate.

All required inspections will be performed at the Servicer's expense in accordance with section 6301 of this guide. All inspection reports must be maintained in the mortgage file and need not be submitted to Freddie Mac unless requested.

§ 6507 Reporting delinquency to Freddie Mac

By the 60th day of delinquency the Servicer must report the mortgage on Form 101.

When the borrower is chronically delinquent and the Servicer has exhausted all reasonable means of inducing the borrower to pay on time, the Servicer should recommend foreclosure, deed in lieu of foreclosure, or, in the case of a second mortgage/HIL, liquidation according to the terms of the security instrument and applicable law. The basis for such a recommendation must be fully substantiated on Form 102.

§ 6508 Abandonment

For FHA and VA mortgages, the Servicer must immediately send a Notice of Default or Notice of Intent to Foreclose to the FHA or VA, regardless of the extent of delinquency, when the mortgaged premises are abandoned. Waiver of the normal 30-day waiting period should be requested from the VA when appropriate.

Regardless of the type of mortgage, the Servicer must attempt to locate the borrower and ascertain the reason for abandonment. The Servicer must take all actions necessary to protect the mortgaged premises from waste, damage, and vandalism. In the case of a second mortgage HIL, the Servicer must immediately contact all superior lienholders to determine their intentions. The Servicer must report the full results of the investigation immediately to the applicable Freddie Mac regional office and make a recommendation regarding the action that should be taken.

*The Servicer must provide to Freddie Mac the Form 1099-A information which Freddie Mac needs to report to the IRS and notify the borrower as required under section 6050J of the Internal Revenue Code. (See section 6205(c) of this guide.)

§ 6509 Rental property

If satisfactory arrangements for repayment of delinquencies have not been made, the Servicer must request the borrower to appoint a real estate agent or other agent to collect rents, maintain the mortgaged premises, and make payment to the Servicer. If such arrangements are not made, the Servicer must determine what means are available to the mortgagee for obtaining the rental income and submit a recommendation to the applicable Freddie Mac regional office.

§ 6510 Relief to borrowers: general Freddie Mac requirements

Freddie Mac grants Servicers broad discretion to extend appropriate relief to borrowers who encounter hardship and who are cooperative and have proper regard for their obligations. The Servicer must be readily available to the borrower to offer skilled financial counseling and advice. The Servicer must make personal contact with the delinquent borrower as often as necessary to achieve a solution that will bring the mortgage current as quickly as possible. The Servicer must be fully familiar with the forms of relief to borrowers provided for in the following sections and must use such relief, when appropriate, rather than recommend termination of the mortgage. Before granting relief, the Servicer must ascertain that the reason for the default and the attitude and circumstances of the borrower justify the relief action contemplated. No relief should be granted to any borrower unless there is a reasonable expectation that the relief will bring the mortgage current and maintain it in that status.

The Servicer is responsible for satisfying all applicable FHA, VA, or MI requirements regarding the relief granted. The Servicer is responsible for collect-

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PREPARED STATEMENT OF LARRY G. KOCH, PRESIDENT AND CHIEF EXECUTIVE OFFICER, REW ENTERPRISES, INC., RECEIVER OF THE FEDERAL LAND BANK OF JACKSON AND THE FEDERAL LAND BANK ASSOCIATION OF JACKSON IN RECEIVERSHIP, JACKSON, MS

Mr. Chairman and members of the subcommittee, thank you for the opportunity to discuss the handling by the Federal Land Bank of Jackson ("Bank") and the Federal Land Bank Association of Jackson ("Association") in Receivership of the "Borrowers' Rights" requirements of the Agricultural Credit Act of 1987 and certain other activities.

On May 20, 1988, the Farm Credit Administration declared the Bank and the Association insolvent. At that time, an inventory was completed of all the assets of the Bank and Association by the FDIC, the FCA and the Receiver. Once this inventory was completed, all these assets were transferred to the Receiver. My report today will reflect certain actions taken by the Receiver during the first 12 months of the Receivership. One of the primary responsibilities of the Receiver has been to liquidate the assets of the Bank and the Association as quickly and prudently as possible while maximizing the return to the Farm Credit System. The Receiver has made much progress toward this end and continues to work for a prompt and successful conclusion to the liquidation.

At the time the Receivership was created, the Bank and the Association had total assets having a book value of $1,979,000,000. This included 21,225 loans with a total book value of $1,629,986,000. As of March 31, 1989, the total Receivership assets at book value were $606,437,000 which included 2,182 loans totaling $375,449,000. On May 20, 1988, there were 515 accruing loans with a total book value of $34,329,000 which were past due 30–89 days and 849 accruing loans with a total book value of $87,417,000 which were past due 90 days or more. On March 31, 1989, we had 42 accruing loans with a total book value of $4,603,292 which were past due 30–89 days and 202 accruing loans with a total book value of $19,777,000 which were past due 90 days or more. On May 20, 1988, there were 2,064 loans with a total book value of $323,574,000 which were on nonaccrual. As of March 31, 1989, the Receivership had 1,356 loans with a total book value of $218,568,000 which were on nonaccrual

Earlier this year, the Receiver sold a substantial portion of the Receivership's loan assets to the Farm Credit Bank of Texas. After the Farm Credit Bank of Texas exercised certain rights that it had under the loan sale documents to cause the Receiver to repurchase certain loans, the Receiver sold them a net of 16,364 loans with total borrower legal obligations of $976,412,658. This included 1,825 accruing loans with total borrower legal obligations of $135,823,828 that were past due 30 days or more.

With respect to outstanding loans, the Receiver has been required to comply with the "Borrowers' Rights" provisions of the Agricultural Credit Act of 1987. In doing so, the Receiver has completed 120 individual restructures involving debt with a total book value of $25,755,000 and 144 reamortizations involving debt with a total book value of $13,412,000. During this same period, the Receiver has compromised 70 loans involving debt with a total book value of $30,153,000. In these compromises or settlements, the Receiver has written off approximately $15 million of indebtedness. In the restructures, it has written off approximately $6,500,000 of indebtedness. These restructures, compromises and reamortizations involve a total of 334 loans with a total book value of $69,200,000. The total amount of indebtedness written off was approximately $21,500,000. In approximately 95 percent of these restructures and reamortizations interest rate concessions were given. There are approximately 26 additional restructures that have been approved by the Receivership that are currently in the process of completion. These will bring the total restructures by the Receiver under Borrowers' Rights to 360 loans. All of the restructures which have been approved by the Receiver were done so on the basis of the least cost method of analysis.

The Receiver has conducted 110 Credit Review Committee hearings where the borrower has appealed a restructure denial. Four (4) of these hearings have resulted in overruling the initial denial.

The servicing of the restructured loans in the Receivership is being handled by its account managers. Most of the restructured loans have been offered for sale in the Receiver's June 15, 1989, bid package. Restructured loans that will remain in the possession of the Receivership will continue to be serviced by the Receivership staff.

Prior to May 20, 1988, it was the policy of the Bank and the Association not to assist borrowers in preparing a restructure proposal because of a perceived concern that such assistance could provide a basis for lender liability claims. Since the inception of the Receivership, the Receiver's policy has been to assist borrowers with their restructure proposal when appropriate. The Receiver now attempts to negotiate with borrowers before and after restructure proposals are submitted.

The Receiver has completed 225 foreclosures involving loans with a book value of approximately $46 million. In 111 of these foreclosures, the subject properties were acquired by the Receivership at the foreclosure sale; in 39 of the foreclosures, the subject properties were acquired by the borrower at the foreclosure sale and in 38 of the foreclosures, the properties were sold to third parties at the foreclosure sale. In four of the foreclosures, the subject notes and mortgages were sold to other creditors. The Receiver has acquired 33 properties through deed-in-lieu of foreclosure or bankruptcy court adjudication.

On May 20, 1988, the Receivership had 120,829 acres of acquired property. Since then, the Receiver has acquired an additional 42,749 acres either through foreclosure, deed-in-lieu of foreclosure or bankruptcy court adjudication. The Receiver has sold 132,682 acres of acquired properties for a total sales price of $65.1 million, which was 89.7 percent of the total appraised value of the properties sold. The Receivership currently has unsold acquired properties of 30,896 acres.

Former borrower/owners have purchased or contracted to purchase from the Receivership 28,125 acres with a total appraised value of $9.9 million. A total of 46 borrower/owners repurchased all or a portion of the property that they had previously owned. The net result is that over 21 percent of the acreage sold by the Receiver was purchased by the previous borrower/owners.

The Receiver continues to work diligently to complete the liquidation of the assets as expeditiously as possible. On June 15, 1989, the Receiver submitted a second bid package to all of the Farm Credit System institutions soliciting bids on substantially all of the remaining loan assets of the Receivership. If a satisfactory bid is received and the sale of those assets consummated, the Receivership will only have approximately 400 loans remaining. This would permit significant downsizing of the Receivership within the next few months.

The Receiver is doubtful that there will be any viable market for those remaining loans. In addition, it may be necessary for the Receivership to continue in order to have an entity available to compromise, settle or litigate to a conclusion the lawsuits involving some of the remaining loans and certain other legal actions filed by or against the Receivership. Thus, while the size of the Receivership may be greatly reduced in the near future, it may be necessary to maintain the Receivership for some time in order to fully resolve the pending litigation. It is impossible to predict at this time how long that might take.

I have endeavored to address in my statement all of the questions which were previously provided to me by this subcommittee. I would be glad to answer any additional questions on these matters which the subcommittee may have.

Respectfully submitted,

LARRY G. KOCH,
President and Chief Executive Officer, REW Enterprises, Inc., Receiver for the Federal Land Bank of Jackson and the Federal Land Bank Association of Jackson in Receivership.

[Material supplied by Mr. Koch follows:]

Federal Land Bank of Jackson
and
Federal Land Bank Association of Jackson
IN RECEIVERSHIP

P.O. Box 14167
Jackson, MS 39236-4167
(601) 957-4000

June 15, 1989

VIA FEDERAL EXPRESS

Mr. Kent Hall, Legislative Assistant to
Senator Kent Conrad
361 Dirksen Building
Washington, D.C. 20510

RE: QUESTIONS CONCERNING RESTRUCTURING OF MEMBER LOANS IN THE JACKSON DISTRICT OF THE FARM CREDIT SYSTEM

Dear Mr. Hall:

Enclosed, please find copies of various documents requested by your office prior to the Senate Agriculture Credit Subcommittee hearing set for June 19, 1989.

1. Question 2., of the second list of questions, requested a written restructuring policy of the Jackson Receivership.
2. Question 3., of the second list of questions, requested a copy of the application forms for restructuring loans used in the Jackson Receivership.
3. Question 6., of the second list of questions, requested a sample calculation of the least cost analysis used for restructuring loans by the Jackson Receivership.
4. Question 7., of the second list of questions, requested a copy of the appeals policy and procedure used by the Jackson Receivership.
5. Question 8., of the second group of questions, requested a copy of the policy on the first right of refusal and the forms that are used and how they are implemented by the Jackson Receivership.

On Friday, June 16, 1989, we will have delivered to your office 75 copies of our prepared statement, along with a camera-ready copy of the statement which can be used for the permanent Congressional records.

If you need any additional information prior to the hearing, please do not hesitate to contact us.

Sincerely,

REW Enterprises, Inc., Receiver

Larry G. Koch

Larry G. Koch, President

LGK/jw

cc: Directors
Michael R. Ford

>

Mr. James Smith
1122 Ventnor Avenue
Kalamazoo, MI 33445

RE: Distressed Loan Restructuring Policy - Transmittal
Loan Number: XXXXXX-XX

Dear Mr. Smith:

Based upon our review of the loan referenced above, you may be eligible for restructuring pursuant to the Agricultural Credit Act of 1987.

Enclosed is a copy of the Federal Land Bank of Jackson and Federal Land Bank Association of Jackson in Receivership's Distressed Loan Restructuring Policy which has been adopted by the board of directors, and a restructuring application. You may be eligible for distressed loan restructuring consideration under this policy.

SHOULD YOU DECIDE TO SEEK DISTRESSED LOAN RESTRUCTURING, YOU MUST COMPLETE AND EXECUTE THE RESTRUCTURING APPLICATION AND SUBMIT IT TO THIS OFFICE, TOGETHER WITH WITH OTHER DOCUMENTS AND INFORMATION REQUESTED NO LATER THAN THE END OF THE BUSINESS DAY ON THE FORTY-EIGHTH (48TH) DAY FOLLOWING THE DATE OF THIS LETTER. IT IS THE BANK'S/ASSOCIATION'S POLICY NOT TO CONSIDER RESTRUCTURING APPLICATIONS SUBMITTED AFTER THIS TIME PERIOD.

I would like to meet with you to review the status of your loan and discuss the application procedures and suitable restructuring alternatives. Please contact me at your earliest convenience to arrange a mutually convenient time.

Please note that copies of this letter, together with copies of the restructuring application and the restructuring policy, are being provided to all other obligors and guarantors (if applicable) on the loan.

Very truly yours,

John Doe
Title

JD:cg

Enclosures

cc: (Names of Co-makers and Other Primary Obligors)(with enclosures)
(Names of Guarantors)(with enclosures)

>

Mr. James Smith
1122 Ventnor Avenue
Kalamazoo, MI 33445

RE: Distressed Loan Restructuring Policy - Transmittal
Loan Number: XXXXXX-XX

Dear Mr. Smith:

The above referenced loan is in default. (Describe events of default if not previously communicated to the borrower.) This is to inform you that the Kalamazoo FLBJR intends to initiate foreclosure on the loan on or after the forty-eighth (48th) day following the date of this letter unless an acceptable restructuring plan is submitted.

Enclosed is a copy of the Federal Land Bank of Jackson and Federal Land Bank Association of Jackson in Receivership's Distressed Loan Restructuring Policy which has been adopted by the board of directors, and a restructuring application. You may be eligible for distressed loan restructuring consideration under this policy.

SHOULD YOU DECIDE TO SEEK DISTRESSED LOAN RESTRUCTURING, YOU MUST COMPLETE AND EXECUTE THE RESTRUCTURING APPLICATION AND SUBMIT IT TO THIS OFFICE, TOGETHER WITH WITH OTHER DOCUMENTS AND INFORMATION REQUESTED NO LATER THAN THE END OF THE BUSINESS DAY ON THE FORTY-EIGHTH (48TH) DAY FOLLOWING THE DATE OF THIS LETTER. IT IS THE BANK'S/ASSOCIATION'S POLICY NOT TO CONSIDER RESTRUCTURING APPLICATIONS SUBMITTED AFTER THIS TIME PERIOD.

I would like to meet with you to review the status of your loan and discuss the application procedures and suitable restructuring alternatives. Please contact me at your earliest convenience to arrange a mutually convenient time.

Please note that copies of this letter, together with copies of the restructuring application and the restructuring policy, are being provided to all other obligors and guarantors (if applicable) on the loan.

Very truly yours,

John Doe
Title

JD:cg

Enclosures

cc: (Names of Co-makers and Other Primary Obligors)(with enclosures)
(Names of Guarantors)(with enclosures)

Appendix A

POLICY OF
BOARD OF DIRECTORS
FEDERAL LAND BANK OF JACKSON
AND
FEDERAL LAND BANK ASSOCIATION
OF JACKSON IN RECEIVERSHIP

SECTION

SUBJECT

Distressed Loan Restructuring

SUMMARY:

The following sets forth the restructuring policy of the FLBJ in Receivership. This policy governs the restructuring of distressed loans made by qualified lenders (lenders), as defined below, and their successors.

The FLBJ in Receivership has an obligation to borrowers, stockholders, and investors in System debt obligations to collect all debts owed to the Receivership. All borrowers are expected to comply with contractual loan terms and conditions. In those instances where the Receivership determines that the borrower's loan is a distressed loan, the lender shall consider restructuring in accordance with this policy.

DEFINITIONS:

QUALIFIED LENDER is:

- o an institution of the Farm Credit System that makes loans (such as the term loan, as defined), and
- o other financing institutions (OFI), as defined in Section 2.3(a)(2) of the Farm Credit Act of 1971, as amended, but only with respect to loans discounted or pledged by an OFI to the Federal Intermediate Credit Bank of Jackson (FICB), or the FICB's successor, should the FICB merge with another bank.

LOAN -- A loan made to a farmer, rancher, or producer or harvester of aquatic products for an agricultural or aquatic purpose and other credit needs of the borrower. This includes financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, producers or harvesters of aquatic products.

DISTRESSED LOAN refers to a loan:

- o where the borrower does not have the financial capacity to pay according to the loan terms, and
- o that exhibits one or more of the following:
  - The borrower is demonstrating adverse financial and repayment trends.
  - The loan is delinquent or past due under the terms of the loan contract.

- One or both of the factors listed above, together with inadequate collateralization, present a high probability of loss to the lender.

RESTRUCTURING includes rescheduling, reamortization, renewal, deferral of principal or interest, monetary concessions, and any other action to modify the terms of, or forbear on, a distressed loan in any way that will make it probable that the operations of the borrower will become financially viable.

APPLICATION FOR RESTRUCTURING is a written request from a borrower for the restructuring of a distressed loan in accordance with a preliminary restructuring plan proposed by the borrower as part of the application. The application must be submitted on appropriate forms prescribed by the lender. The application must be accompanied by sufficient financial information and repayment projections as required by the lender to support a sound credit decision.

COST OF RESTRUCTURING – In determining whether the potential cost to the lender of restructuring a distressed loan is less than or equal to the potential cost of foreclosure, the lender shall consider the following points.

- Present value of interest income and principal foregone by the lender in carrying out the restructuring plan.

- Reasonable and necessary administrative expenses involved in working with the borrower to finalize and implement the restructuring plan, including attorneys' fees, costs, and other expenses advanced by the lender pursuant to the loan documents.

- Whether the borrower has presented a preliminary restructuring plan and cash flow analysis. The plan must take into account income from all sources to be applied to the debt and all assets to be pledged, and show a reasonable probability that orderly debt retirement will occur as a result of the proposed restructuring.

- Whether the borrower has furnished or is willing to furnish complete and current financial statements in a form acceptable to the lender.

- Any other factors considered relevant by the lender that bear upon the individual restructuring decision. The factors may include, but are not limited to, the following.

- whether the borrower is applying all income over and above necessary and reasonable living and operating expenses to the payment of primary obligations;
- whether the borrower has the financial capacity and the management skills to protect the collateral from diversion, dissipation, or deterioration;
- whether the borrower is capable of working out existing financial difficulties, reestablishing a viable operation, and repaying the loan on a rescheduled basis; and
- if a distressed loan that is not delinquent, whether restructuring consistent with sound lending practices may be taken to reasonably ensure that the loan will not become a non-accrual loan.

FORECLOSURE PROCEEDING may be one of the following.

- A foreclosure or similar legal proceeding to enforce a lien on property, whether real or personal, that secures a nonaccrual or distressed loan.
- The seizing of and realizing on nonreal property collateral other than stock, participation certificates allocated surplus, or investments in equity reserve in a Farm Credit System institution.

COST OF FORECLOSURE is composed of these amounts.

- The difference between the loan's outstanding balance due and the loan's liquidation value. Consider the borrower's repayment capacity and the liquidation value of the collateral used to secure the loan.
- The estimated cost of maintaining a loan as a nonperforming asset.
- The estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as the result of the foreclosure, including attorneys' fees and court costs.
- The estimated cost of changes in the value of the collateral used to secure a loan from the time action is initiated to foreclose or liquidate until the disposal of the collateral.
- All other costs incurred as the result of the foreclosure or liquidation of a loan.

SECTION	SUBJECT
	Distressed Loan Restructuring

RESTRUCTURING CRITERIA:

LEAST COST TO LENDER -- When a lender receives an application for restructuring from a borrower and the lender determines that the loan is a distressed loan, the lender shall determine whether or not to restructure the loan. The potential cost of restructuring the loan and the potential cost of foreclosure must be considered. If a lender determines that the potential cost to the lender of restructuring the loan in accordance with a proposed restructuring plan is less than or equal to the potential cost of foreclosure, the lender shall restructure the loan in accordance with the plan. Cost includes all factors relevant to making a sound credit decision.

APPLICATION SUBMITTAL -- A lender is not required to consider a distressed loan for restructuring unless the borrower submits an application for restructuring.

LENDER-PROPOSED PLANS -- This policy shall not prevent a lender from proposing a restructuring plan for a borrower, but the lender is under no obligation to do so. If two or more restructuring alternatives are available, one or more of which may have been proposed by the lender, the lender shall restructure the loan in conformity with the alternative that results in the least cost to the lender.

PREVENTIVE ACTIONS:

COLLATERAL PROTECTION -- Nothing contained in this policy shall be construed to prevent any lender from enforcing any contractual provisions that allow the lender to foreclose a loan, or from taking other lawful action the lender deems appropriate, if the lender has reasonable grounds to believe that the loan collateral will be destroyed, dissipated, consumed, spent, concealed, or permanently removed from the state in which the collateral is located.

MEETINGS:

REASONABLE OPPORTUNITY -- On determination by a lender that a loan is or has become a distressed loan, the lender shall provide a reasonable opportunity for the borrower to personally meet with a representative to review:

- the status of the loan,
- the financial condition of the borrower, and
- the suitability of the loan for restructuring.

NONACCRUAL LOAN -- For a loan in nonaccrual status, the borrower may meet with the lender to develop a plan for restructuring the loan, if the loan is suitable for restructuring.

SECTION	SUBJECT
	Distressed Loan Restructuring

NOTICE TO BORROWERS:

IN GENERAL -- On determination by a lender that a loan is or has become a distressed loan, the lender shall provide written notice to the borrower that the loan may be suitable for restructuring. The written notice must include a copy of this policy and an application form.

LOANS IN DEFAULT -- No later than 45 days before an institution begins foreclosure proceedings, the lender shall provide written notice to the borrower that the loan may be suitable for restructuring. This written notice must include:

- a copy of this restructuring policy; and
- the appropriate forms necessary to enable the borrower to submit an application for restructuring the loan.

APPLICATION PROCEDURES:

45 DAY LIMIT -- Any borrower who has been notified that their loan may be suitable for restructuring may submit an application for restructuring. To be considered, an application must be received in accordance with the time period set by the lender. The time period set by the lender should not be less than 45 days from the date of the lender's first notice to the borrower that the loan may be suitable for restructuring, plus an additional three days if the notice is mailed.

If an application is not received by the lender within the set time period, the lender may begin foreclosure proceedings. The lender will be under no obligation to consider an application after foreclosure proceedings have commenced.

NOTICE OF DECISION:

PROMPT WRITTEN NOTICE -- The borrower's application for restructuring shall be processed and acted upon expeditiously in conformance with normal loan processing procedures. Upon taking action on an application for restructuring, the lender shall provide prompt written notice of its decision to the borrower, including the terms and conditions of the restructuring if approved, or the reasons for the denial if not approved. The notice shall also advise the borrower of the right to receive a review.

REVIEW:

WRITTEN REQUEST -- A borrower who has received a notice of a decision to deny an application for restructuring a distressed loan may request a review of the decision by the appropriate credit review committee.

A request for review must be made in writing and received within 7 days (plus an additional 3 days if the lender's notice of denial is mailed) of the date of the lender's written notice of its denial of restructuring.

COUNSEL/REPRESENTATION -- The borrower may appear in person before the credit review committee. The borrower may be accompanied by counsel, or another representative of the borrower's choice, to seek a reversal of the decision on the application under review.

DOCUMENTATION -- The borrower may submit relevant documents or other information to support the information in the restructuring application. Review by the credit review committee will be limited to the application, as supplemented by relevant documents or evidence supporting the information contained in the application. Documents or evidence containing new information that was not mentioned in the application may not be submitted by the applicant and will not be considered by the credit review committee in reviewing the application for restructuring.

INDEPENDENT APPRAISAL -- A request for review filed with the credit review committee may include a request for an independent appraisal by an accredited appraiser of any interests in property securing the loan and/or additional collateral required as a condition to restructuring the loan.

The credit review committee shall furnish the borrower with a list of three appraisers approved by the lender from which the borrower shall select an appraiser to conduct the appraisal. The cost of the appraisal shall be borne by the borrower. The result of this appraisal shall be considered in the final determination. A copy of the appraisal shall be provided to the borrower and the credit review committee prior to the credit review committee meeting.

FINAL DECISION -- The credit review committee shall reach a decision on the application for restructuring in its sole discretion and the decision shall be final. The credit review committee shall promptly notify the borrower in writing of the committee's decision and of the reasons therefore.

BORROWER STOCK: If a member's loan is forgiven and any of the principal outstanding written off, the same dollar amount of stock held by the member shall be canceled and retired. However, the member shall be entitled to retain at least one share of stock to maintain membership and a voting interest.

DISTRESSED LOAN RESTRUCTURING APPLICATION

A. Identification

FLBA/PCA ____________ Applicant(s) ____________ SSN# ____________ Spouse ____________

State ____________ ____________ ____________ ____________

County/Parish ____________ ____________ ____________ ____________

Branch Office ____________ Guarantor(s) ____________ ____________ ____________

____________ Code

Billing Address ____________ ____________ City State Zip Code Phone ____________ Home ____________ Work

B. Loan Type

FLB: ______ Farm ______ Rural Residence ______ Other

PCA: a. ______ Livestock ______ Crop ______ Aquatic ______ Rural Residence ______ Other
b. ______ Operating ______ Term ______ Other

C. Monetary Concessions

This application for distressed loan restructuring ☐ does ☐ does not include a request to write-off and forgive principal and/or interest or to reduce the existing contract rate of interest.

D. Type of Restructuring Requested

1. Request is made to extend:

$__________ of $__________ due __________ on loan # __________ until __________
$__________ of $__________ due __________ on loan # __________ until __________
$__________ of $__________ due __________ on loan # __________ until __________
$__________ of $__________ due __________ on loan # __________ until __________

2. Request for Change of Maturity Date:

Aggregate Unpaid Principal	Loan Number	Interest Rate Plan (Level/Decreasing)	Installment Period (Mo., Qtr., A)	New Installment Date(s)
$	#			
$	#			
$	#			
$	#			

3. Request for Deferment of Principal:

Principal Payment Due	Due Date	Defer to Date
$		
$		
$		
$		

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4. Request for Reamortization:

a. Decreasing Payment Plan

It is requested that said aggregate unpaid amount, including interest accrued thereon, be reamortized at the variable ____________ loan rate according to the decreasing repayment plan, the first payment of interest being due and payable on the 1st day of ____________, 19____, the principal portion of said indebtedness being due and payable on a ____________ year schedule in ____________ consecutive ________ installments, the last of which shall include remaining principal with interest, the first being due and payable on the 1st day of ____________, 19____.

b. Level Payment Plan

It is requested that said aggregate unpaid amount, including interest accrued thereon, is reamortized at the ________ rate according to the even repayment plan, principal and interest being computed on a ______ year schedule and being due and payable in ____________ consecutive ________ installments, the last to include remaining principal and interest, the first installment being due and payable on the 1st day of ____________, 19____.

The applicant(s) agree that should the request for reamortization be approved, the rate of interest charged may, if a variable rate obligation, be adjusted from time to time as provided on the Note evidencing this obligation.

In the event the loan requested to be reamortized hereby is payable in monthly installments, it is agreed that if the application is approved the interest which accrues between the date hereof and 30 days prior to the date of the next installment due hereon shall be added to and constitute a part of the aggregate unpaid amount and shall be amortized over the remaining term of the loan and bear interest at the rate provided.

5. Other Restructuring Requested: (Specify) ______________________________

____

____

____

E. Reasons for Requesting Distressed Loan Restructuring:

____

____

____

____

F. Plan to Retire Debt or Return Loan to Performing Status Including Source of Payment:

____

____

____

____

G. Additional Collateral Offered as Security (Including Guarantors):

____

____

____

____

H. Are all Borrowers, Co-Makers, and Guarantors Willing to Acknowledge Their Continued Liability on the Loan if the Restructuring Action is Taken? Explain:

____

____

I. Have you Requested that Any of Your Other Creditors Engage in Some Type of Restructuring Action? Explain:

J. Is Restructuring on the Part of Your Other Creditors Necessary in Order to Carry Out the Plan Described in Paragraph F Above?

K. Do you Anticipate an Extension of Additional Credit From Any Other Lender in Order to Carry Out the Plan Described in Paragraph F Above?

Yes ____ No ____ Explain:

L. What Will be the Source, Terms and Conditions of Your Operating Credit During the Restructuring Period? Explain:

M. Will You Agree to Provide Fiscal Year-End Financial Information During the Restructuring Period? Explain:

N. Supplemental Data

In order for this Distressed Loan Restructuring Request to be considered, the following supplemental data must be submitted with this application:

__x__ Information Requirements for Distressed Loan Restructuring (See Attachment)
_____ Other

O. Incomplete Applications
This application will not be considered unless all of the required information is provided, including any supplemental data requested.

P. Release of Information

As authorized by Federal regulations, this association will make available to any other Farm Credit Institution, for its confidential use, any information concerning your loan and this distressed loan restructuring application, including financial statements, your credit history and transactions with this association. Federal regulations also permit this association to furnish any reliable organization impersonal information based solely on transactions or experience the association has had with you.

Q. Default Rate

I/We hereby acknowledge that the lender may, as a condition of approval of this application for distressed loan restructuring, require an increase in the default rate of interest.

R. Certification and Acknowledgement

I hereby certify that the foregoing information and the information contained in the Supplemental Data submitted herewith is true and complete to the best of my knowledge and is given for the purpose of obtaining the restructuring action requested herein.

S. Restructuring Agreement

I/We hereby agree that this application, upon the approval hereof, by the Association and/or if required Bank shall constitute an agreement by the applicant(s) to meet the terms of the agreed upon restructuring request, and of their existing obligation to the full extent of the Note(s), Security Agreement(s), Pledge Agreement(s), Mortgage(s), and any other agreement or understanding between the applicant(s) and the Association/Bank, except as amended herein by the restructuring granted. The applicant(s) further agrees that the Association/Bank may require the execution of other documents or agreements to fully bind the applicant to any of the terms of restructuring that may hereinafter be approved by the Association/Bank as otherwise required to meet the terms and security requirements of the granted restructuring. Recourse is expressly reserved by the Bank against all persons not parties to this instrument who are or may become liable in any capacity for the repayment of the indebtedness(es) aforesaid.

Witness ______________________ Applicant ______________________ Applicant ______________________

Dated ______________________ 19 ____ Applicant ______________________ Applicant ______________________

For Association Use
Date Application Received .... ______________________

For Bank Use Only
Received in Bank .... ______________________

Federal Land Bank of Jackson in Receivership

Appendix A

	SECTION
APPENDIX A	SUBJECT Distressed Loan Restructuring

SUMMARY:

The following sets forth the restructuring policy of the FLBJ in Receivership. This policy governs the restructuring of distressed loans made by qualified lenders (lenders), as defined below, and their successors.

The FLBJ in Receivership has an obligation to borrowers, stockholders, and investors in System debt obligations to collect all debts owed to the Receivership. All borrowers are expected to comply with contractual loan terms and conditions. In those instances where the Receivership determines that the borrower's loan is a distressed loan, the lender shall consider restructuring in accordance with this policy.

DEFINITIONS:

QUALIFIED LENDER is:

- o an institution of the Farm Credit System that makes loans (such as the term loan, as defined), and
- o other financing institutions (OFI), as defined in Section 2.3(a)(2) of the Farm Credit Act of 1971, as amended, but only with respect to loans discounted or pledged by an OFI to the Federal Intermediate Credit Bank of Jackson (FICB), or the FICB's successor, should the FICB merge with another bank.

LOAN -- A loan made to a farmer, rancher, or producer or harvester of aquatic products for an agricultural or aquatic purpose and other credit needs of the borrower. This includes financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, producers or harvesters of aquatic products.

DISTRESSED LOAN refers to a loan:

- o where the borrower does not have the financial capacity to pay according to the loan terms, and
- o that exhibits one or more of the following:
  - - The borrower is demonstrating adverse financial and repayment trends.
  - - The loan is delinquent or past due under the terms of the loan contract.

- One or both of the factors listed above, together with inadequate collateralization, present a high probability of loss to the lender.

RESTRUCTURING includes rescheduling, reamortization, renewal, deferral of principal or interest, monetary concessions, and any other action to modify the terms of, or forbear on, a distressed loan in any way that will make it probable that the operations of the borrower will become financially viable.

APPLICATION FOR RESTRUCTURING is a written request from a borrower for the restructuring of a distressed loan in accordance with a preliminary restructuring plan proposed by the borrower as part of the application. The application must be submitted on appropriate forms prescribed by the lender. The application must be accompanied by sufficient financial information and repayment projections as required by the lender to support a sound credit decision.

COST OF RESTRUCTURING -- In determining whether the potential cost to the lender of restructuring a distressed loan is less than or equal to the potential cost of foreclosure, the lender shall consider the following points.

- Present value of interest income and principal foregone by the lender in carrying out the restructuring plan.

- Reasonable and necessary administrative expenses involved in working with the borrower to finalize and implement the restructuring plan, including attorneys' fees, costs, and other expenses advanced by the lender pursuant to the loan documents.

- Whether the borrower has presented a preliminary restructuring plan and cash flow analysis. The plan must take into account income from all sources to be applied to the debt and all assets to be pledged, and show a reasonable probability that orderly debt retirement will occur as a result of the proposed restructuring.

- Whether the borrower has furnished or is willing to furnish complete and current financial statements in a form acceptable to the lender.

- Any other factors considered relevant by the lender that bear upon the individual restructuring decision. The factors may include, but are not limited to, the following.

- whether the borrower is applying all income over and above necessary and reasonable living and operating expenses to the payment of primary obligations;

- whether the borrower has the financial capacity and the management skills to protect the collateral from diversion, dissipation, or deterioration;

- whether the borrower is capable of working out existing financial difficulties, reestablishing a viable operation, and repaying the loan on a rescheduled basis; and

- if a distressed loan that is not delinquent, whether restructuring consistent with sound lending practices may be taken to reasonably ensure that the loan will not become a non-accrual loan.

FORECLOSURE PROCEEDING may be one of the following.

- A foreclosure or similar legal proceeding to enforce a lien on property, whether real or personal, that secures a nonaccrual or distressed loan.

- The seizing of and realizing on nonreal property collateral other than stock, participation certificates allocated surplus, or investments in equity reserve in a Farm Credit System institution.

COST OF FORECLOSURE is composed of these amounts.

- The difference between the loan's outstanding balance due and the loan's liquidation value. Consider the borrower's repayment capacity and the liquidation value of the collateral used to secure the loan.

- The estimated cost of maintaining a loan as a nonperforming asset.

- The estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as the result of the foreclosure, including attorneys' fees and court costs.

- The estimated cost of changes in the value of the collateral used to secure a loan from the time action is initiated to foreclose or liquidate until the disposal of the collateral.

- All other costs incurred as the result of the foreclosure or liquidation of a loan.

APPENDIX A

SECTION	SUBJECT
	Distressed Loan Restructuring

RESTRUCTURING CRITERIA:

LEAST COST TO LENDER -- When a lender receives an application for restructuring from a borrower and the lender determines that the loan is a distressed loan, the lender shall determine whether or not to restructure the loan. The potential cost of restructuring the loan and the potential cost of foreclosure must be considered. If a lender determines that the potential cost to the lender of restructuring the loan in accordance with a proposed restructuring plan is less than or equal to the potential cost of foreclosure, the lender shall restructure the loan in accordance with the plan. Cost includes all factors relevant to making a sound credit decision.

APPLICATION SUBMITTAL -- A lender is not required to consider a distressed loan for restructuring unless the borrower submits an application for restructuring.

LENDER-PROPOSED PLANS -- This policy shall not prevent a lender from proposing a restructuring plan for a borrower, but the lender is under no obligation to do so. If two or more restructuring alternatives are available, one or more of which may have been proposed by the lender, the lender shall restructure the loan in conformity with the alternative that results in the least cost to the lender.

PREVENTIVE ACTIONS:

COLLATERAL PROTECTION -- Nothing contained in this policy shall be construed to prevent any lender from enforcing any contractual provisions that allow the lender to foreclose a loan, or from taking other lawful action the lender deems appropriate, if the lender has reasonable grounds to believe that the loan collateral will be destroyed, dissipated, consumed, spent, concealed, or permanently removed from the state in which the collateral is located.

MEETINGS:

REASONABLE OPPORTUNITY -- On determination by a lender that a loan is or has become a distressed loan, the lender shall provide a reasonable opportunity for the borrower to personally meet with a representative to review:

- the status of the loan,
- the financial condition of the borrower, and
- the suitability of the loan for restructuring.

NONACCRUAL LOAN -- For a loan in nonaccrual status, the borrower may meet with the lender to develop a plan for restructuring the loan, if the loan is suitable for restructuring.

APPENDIX A

SECTION	SUBJECT
	Distressed Loan Restructuring

NOTICE TO BORROWERS:

IN GENERAL -- On determination by a lender that a loan is or has become a distressed loan, the lender shall provide written notice to the borrower that the loan may be suitable for restructuring. The written notice must include a copy of this policy and an application form.

LOANS IN DEFAULT -- No later than 45 days before an institution begins foreclosure proceedings, the lender shall provide written notice to the borrower that the loan may be suitable for restructuring. This written notice must include:

- a copy of this restructuring policy; and
- the appropriate forms necessary to enable the borrower to submit an application for restructuring the loan.

APPLICATION PROCEDURES:

45 DAY LIMIT -- Any borrower who has been notified that their loan may be suitable for restructuring may submit an application for restructuring. To be considered, an application must be received in accordance with the time period set by the lender. The time period set by the lender should not be less than 45 days from the date of the lender's first notice to the borrower that the loan may be suitable for restructuring, plus an additional three days if the notice is mailed.

If an application is not received by the lender within the set time period, the lender may begin foreclosure proceedings. The lender will be under no obligation to consider an application after foreclosure proceedings have commenced.

NOTICE OF DECISION:

PROMPT WRITTEN NOTICE -- The borrower's application for restructuring shall be processed and acted upon expeditiously in conformance with normal loan processing procedures. Upon taking action on an application for restructuring, the lender shall provide prompt written notice of its decision to the borrower, including the terms and conditions of the restructuring if approved, or the reasons for the denial if not approved. The notice shall also advise the borrower of the right to receive a review.

REVIEW:

WRITTEN REQUEST -- A borrower who has received a notice of a decision to deny an application for restructuring a distressed loan may request a review of the decision by the appropriate credit review committee.

A request for review must be made in writing and received within 7 days (plus an additional 3 days if the lender's notice of denial is mailed) of the date of the lender's written notice of its denial of restructuring.

COUNSEL/REPRESENTATION -- The borrower may appear in person before the credit review committee. The borrower may be accompanied by counsel, or another representative of the borrower's choice, to seek a reversal of the decision on the application under review.

DOCUMENTATION -- The borrower may submit relevant documents or other information to support the information in the restructuring application. Review by the credit review committee will be limited to the application, as supplemented by relevant documents or evidence supporting the information contained in the application. Documents or evidence containing new information that was not mentioned in the application may not be submitted by the applicant and will not be considered by the credit review committee in reviewing the application for restructuring.

INDEPENDENT APPRAISAL -- A request for review filed with the credit review committee may include a request for an independent appraisal by ~~an accredited~~ appraiser of any interests in property securing the loan and/or additional collateral required as a condition to restructuring the loan.

The credit review committee shall furnish the borrower with a list of three appraisers approved by the lender from which the borrower shall select an appraiser to conduct the appraisal. The cost of the appraisal shall be borne by the borrower. The result of this appraisal shall be considered in the final determination. A copy of the appraisal shall be provided to the borrower and the credit review committee prior to the credit review committee meeting.

FINAL DECISION -- The credit review committee shall reach a decision on the application for restructuring in its sole discretion and the decision shall be final. The credit review committee shall promptly notify the borrower in writing of the committee's decision and of the reasons therefore.

BORROWER STOCK: If a member's loan is forgiven and any of the principal outstanding written off, the same dollar amount of stock held by the member shall be canceled and retired. However, the member shall be entitled to retain at least one share of stock to maintain membership and a voting interest.

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TRENDS ANALYSIS STATEMENT
INCOME AND EXPENSE

Applicant ________________________________, FLBA ____________________ ✓

	19____		19____		19____	
	ACRES		ACRES		ACRES	
LAND USE	OWNED	RENTED	OWNED	RENTED	OWNED	RENTED
1. Cropland						
2. Pasture						
3. Timber						
4.						
5. Total Acres						

CROP & LIVESTOCK	ACRES/ UNITS	YLD. PER AC./UT.	GROSS SALES	ACRES/ UNITS	YLD. PER AC./UT.	GROSS SALES	ACRES/ UNITS	YLD. PER AC./UT.	GROSS SALES
1.									
2.									
3.									
4.									
GROSS FARM INCOME									

FARM EXPENSES			
1. Hired Labor			
2. Repairs			
3. Purchased Feeder Stock			
4. Feed			
5. Seed & Plants			
6. Fertilizer			
7. Machinery Hire			
8. Supplies			
9. Livestock Expense			
10. Fuel & Oil			
11. Storage & Transportation			
12. Chemicals			
13. Taxes (R.E. & Pers. Prop.)			
14. Insurance			
15. Utilities			
16. Miscellaneous			
17.			
18. Total Direct Farm Expense			
19. Rents & Leases			
20. Depreciation			
21. Production Interest			
22. All Other Interest			
23. Total Farm Expense	$	$	$
24. Net Farm Income	$	$	$
25. Total Farm Cash Flow	$	$	$
NON-FARM INCOME (List)			
26.			
27.			
28.			
29.			
30. Total Non-Farm Income	$	$	$

______________________, FLBA ______________ ______________________

Assets	19___	19___	19___	(+ or –) CHANGE
Cash on hand and in banks				
Cash value life insurance				
Securities				
Accounts Receivable				
Notes receivable				
Products for feed and seed ...				
Farm products for sale				
Unharvested crops, matured ...				
Cash investment in other crops				
Livestock held for sale:				
No.______ Kind________				
No.______ Kind________				
Total Current				
Stock in cooperatives				
Automobiles and trucks				
Machinery and equipment				
Breeding livestock:				
No.______ Kind________				
No.______ Kind________				
Other				
Total Intermediate				
Market value of this property				
Other Real Estate:				
Acres or Kind | Location | Yr. Acq.				
......				
......				
Total Fixed Assets				
Total Assets				
Liabilities				
Notes and contracts due within 1 year				
Crop loans				
Total Current				
Unmatured debts due in 1 to 7 years				
______________________				
Total Intermediate				
Liens on this property				
______________________				
Other real estate liens				
______________________				
Total Long Term				
Total Liabilities				
Net Worth				
Liability to asset ratio	%	%	%	%

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Notes and Accounts Receivable*

Type	From Whom	Collateral	Interest Rate	Final Date Due	Annual Payment	Present Balance
					$	$
					TOTAL	$

Securities*

Description	Marketable	Not Readily Marketable	Pledged To	Amount Owed
	$	$		$
TOTAL	$	$		

Other: (Indicate whether Asset or [Liability])

Description	Amount	Description	Amount
	$		$
		TOTAL	$

CREDIT REFERENCES____________________

INCOME: You are not required to disclose income from alimony, child support or maintenance. If you choose to disclose such information, it will be considered in loan evaluation.

EMPLOYEE	EMPLOYER (Name and Address)	JOB DESCRIPTION	YRS. SVC.	GROSS INCOME
				$
				$
			OVERTIME	$

Land to be included in this mortgage Acres Tillable__________ Acres Pasture__________
Other land owned Acres Tillable__________ Acres Pasture__________
Land rented from others Acres Tillable__________ Acres Pasture__________

ESTIMATED FARM INCOME GROSS $__________ NET $__________
INCOME FROM OTHER SOURCES__________ GROSS $__________ NET $__________

CHECKING ACCOUNT NUMBER__________ SAVINGS ACCOUNT NUMBER__________

PERSONAL STATEMENT: Married ☐ Unmarried ☐ Separated ☐ Child support paid $__________

Amount of alimony paid $__________ Separate Maintenance paid $__________

Applicant's age__________ Spouse's age__________ Children's ages:__________

Disabilities (by age or other)__________ Years farmed__________ On this farm__________yrs.

How will farm be operated?__________

My principal residence is__________Which is__________Miles from this farm.
I (we) will ☐ I (we) will not ☐ live on this property.

The information contained in this statement and all other documents referred to herein are true, correct and complete and I (we) fully understand that it is a federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions of Title 18, United States Code, Section 1014.

– Recertified –

Signature__________ Signature__________

Date:__________ Date__________

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FINANCIAL STATEMENT

Loan No.

Statement of: As of 19

ASSETS (ROUND $) LIABILITIES (ROUND $)

	APPLICANT	FOR ASSN. USE				APPLICANT	FOR ASSN. USE
Column 1	Column 2 Amount at Application	Column 3 Adjusted at Loan Closing	Column 4 To Whom Payable Security Given and Date Incurred	Col. 5 Interest Rate	Col. 6 Annual $ Payment	Column 7 Amount at Application	Column 8 Adjusted at Loan Closing
CURRENT Cash on hand and in banks			Notes and Contracts due within 1 year				
Cash value life insurance							
Securities*							
Accounts receivable*							
Notes receivable*							
Products for feed and seed							
Farm products for sale							
Unharvested crops, matured							
Investment Other Crops							
Livestock held for sale:			Crop Loans:				
No. Kind							
No. Kind							
TOTAL CURRENT $			TOTAL CURRENT			$	
INTERMEDIATE Stock in cooperatives			Unmatured Debts due in 1 to 7 years from above date				
Automobiles and trucks							
Machinery and equipment							
Breeding livestock:							
No. Kind							
No. Kind							
TOTAL INTERMEDIATE $			TOTAL INTERMEDIATE			$	
FIXED Market value of this property			Liens on this property:				
Other real estate: Acres or Kind Location Yr. Acq.							
			Other real estate liens:				
Sales contracts receivable							
Terms							
TOTAL FIXED $			TOTAL LONG TERM			$	
TOTAL ASSETS $			TOTAL LIABILITIES			$	
Intangible assets $			NET WORTH			$	
Describe			Contingent liabilities			$	
Current Ratio %			Describe				
Liability to asset ratio %							

CREDIT & EMPLOYMENT INFORMATION

Your Name ______________________ Address ______________________

Spouse's Name ______________________ Address ______________________

Other Business Names ______________________ Address ______________________

Social Security Numbers: (yours) __________ (spouse) ______________________

Telephone Numbers: (Home) __________ (Work) ______________________

IF EXTRA SPACE IS NEEDED, PLEASE ATTACH AN EXTRA SHEET

I. CREDIT INFORMATION: Show the name, address, and account number (if known) for each financial institution you presently do business with, either as a borrower or as a checking/savings customer.

	Company Name	Address	Type Account	Account #
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				

II. EMPLOYMENT INFORMATION:

1. Place of Employment (yours): ______________________

   Address: ______________________

   Salary: $__________ per __________: (Bonus, Overtime, etc.) $__________

2. Place of Employment (spouse): ______________________

   Address: ______________________

   Salary: $__________ per __________: (Bonus, Overtime, etc.) $__________

III. Other: Provide verification of other income: Social Security, Retirement, etc.

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Rev. 3/88

Federal Land Bank of Jackson
and
Federal Land Bank Association of Jackson
IN RECEIVERSHIP

P.O. Box 14167
Jackson, MS 39236-4167
(601) 957-4000

Dear Sir:

I am considering applying for a loan or loan treatment with Farm Credit Services. I understand that this information will be provided as a business courtesy and will be confidential between you and this institution.

Please complete this form and forward it to them in the attached envelope. Your prompt attention will be appreciated.

Signature______________________________ Date__________________________
Name_________________________________
Address_______________________________
____
Social Security #_______________________

Name and address of above party, as they appear on our records:
____
____

He/She is_____, or is not _____, currently employed by us.

If yes, date employed ______________________________

Present position: ______________________________________

Probability of future employment:___________________________

Gross Salary: $__________________ per __________________

Salary last 12 months: $____________________

Signature______________________________ Title__________________________

Company ____

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RE: Name: ______________________
Address: ______________________
____
S. S. No.: ______________________

Dear Sir:

I am considering applying for a loan or loan treatment with Farm Credit Services. I hereby authorize you to furnish credit information and/or verification of assets or liabilities. I understand that this information will be provided as a business courtesy and will be confidential between you and this institution.

Please complete this form and return in the enclosed self-addressed envelope. Your prompt attention will be appreicatied.

______________________ ______________________
Signature Date

EASE GIVE SPECIFIC BALANCES

Checking Acct.(s)

Acct. #	$Amt.

Savings Acct.(s)

Acct. #	$Amt.

Other

Type	Acct. #	$Amt.

LOAN INFORMATION:

Loan No.	Original Principal Balance	Present Principal Balance	Regular Installmt	Date Due	Int. Rate	Accrued Int.	Amt. of Delinq.	Loan Security

OTHER:

Has this individual paid his installment satisfactorliy? ( ) Yes ( ) No

As a credit risk, is this individual considered ( ) Excellent ( ) Good ( ) Fair ( ) Poor

______________________ ______________________ ______________________ ______________________
gnature Title Date Phone

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Date ______________________

OBLIGATION TO PROVIDE FUTURE FINANCIAL INFORMATION

I/we, the borrower(s) under FLB/PCA Loan Number ____________, hereby agree and covenant to provide verifiable financial statements, including balance sheets and income statements, at least annually to the lender handling my/our loan. I/we agree to provide such information in compliance with a request by the lender and/or under the terms of my/our mortgage/deed of trust.

______________________ BORROWER	______________________ BORROWER
______________________ BORROWER	______________________ BORROWER
______________________ BORROWER	______________________ BORROWER

FCB-43
3/88

INFORMATION REQUIREMENTS
for
RESTRUCTURING TROUBLED DEBT

For the association/bank to consider restructuring a troubled debt, the following will be required:

- A formal request for troubled debt restructuring by a borrower on the forbearance application.
- Complete and current balance sheets, signed and dated, on all parties liable on the Federal Land Bank loan(s).
  - With verification of major assets listed on each balance sheet, and supporting balance sheets on any other business owned.
- Fiscal year-end balance sheets for the previous three years.
  - Supporting balance sheets on any other businesses owned fiscal year-end.
- Detailed fiscal year-end income and expense statements for the previous three years. Include:
  - income from all non-farm sources, individual and business;
  - income from any farm-related business; and
  - copies of tax records.
- Detailed acreage and production records for each crop planted for the previous three years. Separate by acreage owned, cash rented or crop share arrangements. Livestock operations should show number of head and production per head.
- A written plan proposed by the borrower which details the adjustments to be made in the farm operation. This plan must include:
  - The specific request being made of the Federal Land Bank.
  - A list of all creditors showing the debt service requirements and interest rates, as well as sources of income for repayment in accordance with the proposed plan. A cash flow analysis to support the presentation must also be submitted.

- A detailed identification of proposed debt restructuring, payment deferrals of interest and/or principal, or compromise of debts presently owned. Specific identification of all concessions being made by each creditor should be provided.

- Detailed acreage and projected yields for each crop planted for the current year, separated by acreage owned, cash rented or crop share arrangements. Livestock operations should show number of head and production per head.

- Projected income and expenses for the current year.

- If the proposed plan calls for changes in crop/production schedules for future years, a detailed projected income and expense statement as well as projected acreage and yields for each crop planted must be provided.

- If payments are delinquent to any major creditors, including the Federal Land Bank, a proposed method for making delinquent payments must be provided.

- A schedule of collateral to be provided to all creditors after the completion of the proposed plan.

- If it is necessary to liquidate assets to accomplish the proposed plan, provide a detailed description of these assets, the intended method of liquidation, and projected time frame to complete anticipated liquidation.

- If the disposal of any real and/or personal property assets does not fully liquidate mortgages on the property, a complete plan for handling the deficiency should be provided.

- A balance sheet that reflects the borrower's financial situation after all adjustments are made according to the proposed plan.

CALCULATION OF MONETARY COST - RESTRUCTURE ALTERNATIVE

$155,000 @ 10½% Fixed for 5 years then revert to FLB variable rate, 25 year total amortization - $5,000 immediate payment

CASH INFLOWS:	Immediate In/Out Flows	Year 1	Year 2	Year 3	Year 4	Year 5
Payments per restructure plan	$5,000	$17,737	$17,737	$17,737	$17,737	$17,737
App. value of property transferred to bank						
Less distressed sales allowance						
Less prior liens (balance at time of sale)						
Less decrease in property value						
Misc. Inflow						
Misc. Inflow						145,988
Total Cash Inflows	$5,000	$17,737	$17,737	$17,737	$17,737	$163,725
CASH OUTFLOWS:						
Est. costs - property to be transferred:						
Payments on prior liens						
Delinquent taxes and taxes due						
Maintenance and insurance costs						
Attorney's fees, court costs, etc.						
Commissions and other selling costs						
Misc. other costs or cash outflows						
Other funds advanced						
Total Cash Outflows	-0-	-0-	-0-	-0-	-0-	-0-
Net Cash Flow	$5,000	$17,737	$17,737	$17,737	$17,737	$163,725

MONETARY COST OF RESTRUCTURE	
Cost of Funds	10.115
Present value - net cash flows	162,215
Total debt less stock (current status)*	-333,255
Monetary Cost of Restructure	-171,040

*Enter negative number

IMPACT OF DEPRECIATING COLLATERAL VALUE	
Loan bal. at end of restructure period	$145,988
AV less sales costs, prior liens, misc.	175,600
if loan >AV, loan less AV =	
Monetary cost of restructure	
Total	

0050/GX:
8/1/88

CALCULATION OF MONETARY COST - FORECLOSURE ALTERNATIVE

CASH INFLOWS:	Immediate In/Out Flows	Year 1	Year 2	Year 3	Year 4	Year 5
Appraised value of collateral			$219,500			
Less distressed sales allowance						
Less prior liens (balance at time of sale)						
Less decrease in collateral value						
Misc. inflow						
Misc. inflow			10,500	(rent of property)		
Total Cash Inflows	-0-	-0-	230,000			

CASH OUTFLOWS:	Immediate In/Out Flows	Year 1	Year 2	Year 3	Year 4	Year 5
Estimated costs - existing collateral:						
Payments on prior liens						
Delinquent taxes and taxes due		879	879			
Maintenance and insurance costs		893	593			
Attorney's fees, court costs, etc.		1,000	100			
Commissions and other selling costs		6,585	250			
Misc. other costs or cash outflows						
Other funds advanced						
Total Cash Outflows	-0-	$9,357	$1,822			
Net Cash Flow	-0-	-9,357	$228,178			

MONETARY COST OF FORECLOSURE

Cost of Funds	10.115
Present value - net cash flows	$179,686
Total debt less stock (current status)*	-333,255
Monetary Cost of Foreclosure	-153,569

*Enter negative number

0050/GX2
8/1/88

Federal Land Bank and Federal Land Bank Association of Jackson, in Receivership	BR-401
CREDIT REVIEW COMMITTEES	SECTION COMMITTEE FUNCTION AND COMPOSITION
	SUBJECT

REFERENCE: Farm Credit Act of 1971, as amended by the Agricultural Credit Act of 1987. FCA Regulation 12 CFR Part 614-4440 et seq.

SUMMARY:

Each qualified lender (lender) will establish credit review committees to review adverse distressed loan restructuring decisions. There will be three members in each committee.

PURPOSE:

The credit review committee will review adverse actions on formal, written distressed loan restructuring applications. An applicant who has received written notice from the lender of a decision to deny a distressed loan restructuring request may obtain a review of the decision in person before the credit review committee.

FUNCTION:

FORMAL, TIMELY REQUEST -- An adverse action on a formal written distressed loan restructuring application will be reviewed only if the applicant makes a written request for a review as follows:

- o Distressed Loan Restructuring Application, within 7 days after the notice of adverse action was personally delivered to the applicant (10 days if the notice was mailed).
- o Loans Placed in Non-Accrual Status, within 7 days after the date of the notice denying a borrower's request to have the loan placed back into accrual status (10 days, if the notice was mailed). (See BR-204, Placing Loans in Non-Accrual Status.)

INDEPENDENT ACCREDITED APPRAISALS -- A list of three independent accredited appraisers will be provided by the credit review committee within 30 days of an applicant's request. The results of this appraisal will be taken into consideration by the committee in reaching its final determination.

QUORUM REQUIREMENTS -- A decision by the committee requires the participation of all three members, none of whom were involved in making the adverse decision under review.

EFFECTIVE DATE
June 12, 1989

AUTHORITY -- The committee's decision shall be decided by a majority vote. The decision will be the final decision of the institution on the distressed loan restructuring application.

BASIS FOR COMMITTEE DECISION -- The committee shall review the adverse decision specified in the notice provided to the applicant. The committee shall then take one of the following actions.

- Majority Agrees -- If, after reviewing the adverse action, a majority of the committee members agree with that decision, no further action will be taken on the application. In this event, the application will be denied and the applicant will be notified in writing of the decision and the reasons for the decision by the committee chairperson.
- Majority Disagrees -- If a majority of the committee members disagree with the adverse action after reviewing the denial of a distressed loan restructuring application, the committee may approve the application as submitted. The distressed loan restructuring request will be approved and the applicant will be notified in writing of the decision and the reasons for the decision by the committee chairperson.

COMMITTEES:

Each lender will establish one or more credit review committees to review an applicant's request for reconsideration of an adverse decision on a formal written distressed loan restructuring application.

NOTE

In all cases, none of the committee members may have been involved in the adverse decision being reviewed.

COMPOSITION -- The credit review committee must include a minimum of three people.

- One person must be a current member of the board of directors of the lender which considered the application.
- Two members will be selected according to the following criteria:

Federal Land Bank and Federal Land Bank Association
of Jackson, in Receivership

BR-402

CREDIT REVIEW COMMITTEES

SECTION

CREDIT REVIEW COMMITTEE PROCEDURES

SUBJECT

REFERENCE:

Farm Credit Act of 1971, as amended by the Agricultural Credit Act of 1987. FCA Regulation 12 CFR Part 614-4440 et seq.

SUMMARY:

When requested by the applicant, credit review committees will reconsider the following decisions:

- denial of a request that a loan not delinquent in any principal or interest payment be placed back in accrual status; or
- denial of a distressed loan restructuring request.

Procedures for processing an applicant's request for review are outlined below.

REQUEST FOR A REVIEW:

ON DISTRESSED LOAN RESTRUCTURING APPLICATIONS -- Upon receipt of an applicant's written request for a review of an adverse action on a distressed loan restructuring application, the CEO/president (or designee) shall verify that the request was submitted to the lender within 7 days of the written notice (10 days if mailed).

LOANS PLACED IN NON-ACCRUAL STATUS -- Upon receipt of a borrower's written request for a review of the denial of a request that a loan be placed back in accrual status, the CEO/president (or designee) shall verify that the request was submitted to the lender within 7 days of the written notice (10 days, if mailed).

DENIAL OF A REVIEW -- If the request for a review was not submitted on a timely basis, the request shall be denied unless the lender elects to consider the application. The requesting party shall be notified in writing of the reason for the denial of a review (Fig. 42).

SCHEDULING THE REVIEW:

AS SOON AS PRACTICABLE -- Upon timely receipt of a request for a review, the credit review committee members will be notified of the borrower's request. The review should be scheduled as soon as practicable. The credit review committee members will be provided with a copy of the loan action and other pertinent information at the time of notification

__BORROWER NOTIFICATION__ -- The applicant shall be notified promptly, in writing (Fig. 43):

- of the time and place of the committee meeting;
- of the right to appear in person at the meeting and be accompanied by counsel or another representative;
- of the informal nature of the review and that it is not intended to be adversarial; and
- of the right to submit any relevant documents or other evidence to support the information contained in:
  - the loan application that demonstrates the loan applied for is an eligible loan; or
  - the distressed loan restructuring application that demonstrates that the application satisfies the credit standards of the lender.

__INDEPENDENT ACCREDITED APPRAISAL__ -- A request for review may include a request for an independent appraisal by an accredited appraiser of any interests in property securing the loan and/or additional collateral demanded by the lender in determining whether to restructure the loan. If such a request is made, the credit review committee must notify the applicant, in writing (Fig. 45), within 30 days of the request for an independent appraisal, but prior to the scheduling of the credit review committee meeting:

- of the names of three independent, accredited appraisers from which to choose;
- that the applicant will bear any expense associated with the appraisal; and
- that the results of the appraisal will be considered by the credit review committee in its final determination.

A copy of the appraisal must be provided to the applicant and the credit review committee prior to the credit review committee meeting.

NEW INFORMATION INADMISSABLE -- Whether or not the applicant appears in person at the committee meeting, documents or evidence containing new information that was not mentioned or included in the application, other than an independent appraisal, may not be submitted and will not be considered by the committee in reviewing the adverse decision. (For example, the committee would not consider evidence of additional sources of income or additional collateral if they were not mentioned in the distressed loan restructuring application.)

NOTE

The applicant should be cautioned that documents or evidence containing new information not mentioned or included in the application may not be submitted to the committee, except for an independent appraisal requested by an applicant.

POSTPONEMENT OF MEETING -- If the applicant requests a postponement of the committee meeting for reasonable cause, the meeting may be rescheduled by the committee chairperson. Failure to meet the rescheduled meeting date or a second request for rescheduling may result in debtor not being afforded a personal appearance before the committee, at the discretion of the committee chairperson.

CONDUCTING THE REVIEW:

APPLICANT PRESENTS VIEWS -- The purpose of the review is to afford the applicant an opportunity to present his/her views on the application. The review will be an informal meeting at which the applicant will be permitted to explain why he/she believes the application satisfied the credit standards of the lender. The applicant may be accompanied by counsel or any other representative for the purpose of supplying the committee with information relevant to the application being reviewed.

LEGAL COUNSEL -- The credit review committee meeting is to be informal and is not intended to be adversarial. If the applicant is accompanied by an attorney, the committee shall have an attorney present.

PRIVATE DELIBERATIONS -- After the applicant has presented his/her views, the committee will conduct its deliberations outside the presence of the applicant.

COMMITTEE MEETING MINUTES -- The chairman of the committee, or the designee, shall take minutes of the meeting. The minutes should be similar in form and content to minutes taken at a loan committee meeting. The minutes should briefly summarize:

- the parties present,
- the issues presented,
- the decision reached by the committee, and
- the reasons for the decision.

DECISION OF THE COMMITTEE:

PROMPT NOTIFICATION TO BORROWER -- The committee shall render its decision in as expeditious a manner as possible after the committee meeting is concluded. The applicant shall be promptly notified in writing of the committee's decision and the reasons for that decision (Fig. 46).

NOTE

DISTRESSED LOAN RESTRUCTURING APPLICATION -- In the case of a distressed loan restructuring application involving multiple applicants, notice of the committee's decision should be provided to each primary obligor and guarantor.

MULTIPLE APPLICANTS -- In the case of a loan application involving multiple applicants, notice of the committee's decision may be provided to any one of the parties.

COMMENCEMENT OF FORECLOSURE PROCEEDINGS -- In the event the committee concurs with the adverse decision on a distressed loan restructuring application, no further notice other than that provided for shall be necessary prior to commencement of a foreclosure proceeding.

RECORDS:

ON ALL REQUESTS -- Each lender shall maintain a complete file of all requests for a review. These files shall include the following.

- All written requests for review, including copies of any documents or other materials considered by the committee in conducting the reviews.

- The minutes of each committee meeting and notification to the applicant of the disposition of all reviews conducted by the committee.
- Any other written inquiries concerning adverse decisions on distressed loan restructuring applications.

NO CONFIDENTIAL DOCUMENTS -- The file shall not include any privileged or confidential documents prepared by the lender for the purpose of evaluating loan and distressed loan restructuring applications.

RECORD RETENTION -- Each lender shall retain files for 25 months after the date of notification of the committee's decision.

A request for review must be made in writing and received within 7 days (plus an additional 3 days if the lender's notice of denial is mailed) of the date of the lender's written notice of its denial of restructuring.

COUNSEL/REPRESENTATION -- The borrower may appear in person before the credit review committee. The borrower may be accompanied by counsel, or another representative of the borrower's choice, to seek a reversal of the decision on the application under review.

DOCUMENTATION -- The borrower may submit relevant documents or other information to support the information in the restructuring application. Review by the credit review committee will be limited to the application, as supplemented by relevant documents or evidence supporting the information contained in the application. Documents or evidence containing new information that was not mentioned in the application may not be submitted by the applicant and will not be considered by the credit review committee in reviewing the application for restructuring.

INDEPENDENT APPRAISAL -- A request for review filed with the credit review committee may include a request for an independent appraisal by an accredited appraiser of any interests in property securing the loan and/or additional collateral required as a condition to restructuring the loan.

The credit review committee shall furnish the borrower with a list of three appraisers approved by the lender from which the borrower shall select an appraiser to conduct the appraisal. The cost of the appraisal shall be borne by the borrower. The result of this appraisal shall be considered in the final determination. A copy of the appraisal shall be provided to the borrower and the credit review committee prior to the credit review committee meeting.

FINAL DECISION -- The credit review committee shall reach a decision on the application for restructuring in its sole discretion and the decision shall be final. The credit review committee shall promptly notify the borrower in writing of the committee's decision and of the reasons therefore.

BORROWER STOCK: If a member's loan is forgiven and any of the principal outstanding written off, the same dollar amount of stock held by the member shall be canceled and retired. However, the member shall be entitled to retain at least one share of stock to maintain membership and a voting interest.

SECTION	SUBJECT
	Distressed Loan Restructuring

REVIEW:

WRITTEN REQUEST -- A borrower who has received a notice of a decision to deny an application for restructuring a distressed loan may request a review of the decision by the appropriate credit review committee.

SECTION	SUBJECT
COMMITTEE FUNCTION AND COMPOSITION	

- Applications Submitted to FLBJR or FLBAJR for Approval -- The CEO/president (or designee) of the FLBJR shall appoint two bank credit staff members to serve on the committee, neither of whom were involved in the adverse action. The CEO/president shall also designate a committee chairperson.

Date

Name
Address

RE: Borrower: Name
Loan Number: XXXXXX-XX

Dear ________:

Your request for a review of an adverse credit decision dated ____________________ has been received. Your request, however, was not timely submitted. Your request for review is, therefore, denied.

Sincerely yours,

Phil S. Diller
Chairman, Credit Review Committee

FIGURE 42

Date

Name
Address

RE: Credit Review Committee Meeting
Loan Number: XXXXXX-XX

Dear _________:

This is to inform you that the Federal Land Bank of Jackson in Receivership has received your request for a review of the adverse action. Your request has been referred to the credit review committee for consideration. A review before that committee has been scheduled for 6:30 p.m. on March 1, 19888, at 1212 Boardwalk.

You have the right to appear in person and be accompanied by counsel or by another representative at this meeting. So that we might insure that adequate accommodations are available, please advise me of the individual(s) who will accompany you. Please note that the meeting is informal and is not intended to be adversarial. You may submit any relevant documents or evidence to support the information contained in your loan application to the credit review committee which you believe will demonstrate that your application satisfies the credit standards of the lender.

If you have requested an independent appraisal of your interest in property securing the loan, the committee must receive a copy no later than 5 days prior to the date of the review. Please note that, with the exception of such an appraisal, you may not submit any documents or information that was not mentioned or included in the loan application.

If you have any questions regarding this right of review, please feel free to contact us.

Sincerely yours,

Phil S. Diller
Chairman, Credit Review Committee

PSD/ss

FIGURE 43

Date

Name
Address

RE: Borrower: Name
Loan Number: XXXXXX-XX

Dear ________:

In response to your request for an independent appraisal of (your interest in property offered as collateral in connection with your loan application or additional collateral required by the lender in determining whether to restructure your loan) attached is a list of three (3) appraisers from which you may choose.

Please note that you are responsible for making any and all arrangements for the appraisal. Additionally, the cost of the appraisal will be paid by you.

In order that we might schedule the Credit Review Committee meeting, please contact me within 10 days regarding the anticipated completion date of this appraisal. The committee must receive a copy no later than five days prior to the date of the committee meeting.

If you have any questions regarding this matter, please feel free to contact me.

Sincerely yours,

Phil S. Diller
Chairman, Credit Review Committee

Enclosure

THIS LETTER IS DRAFTED TO BE USED WITH EITHER A REQUEST FOR AN INDEPENDENT APPRAISAL BY A LOAN APPLICANT OR AN APPLICANT FOR DISTRESSED LOAN RESTRUCTURING.

FIGURE 45

Date

Name
Address

RE: Credit Review Committee Action
Loan Number: XXXXXX-XX

Dear ________:

As a result of our review of the adverse action of the Federal Land Bank of Jackson in Receivership, please be advised that the committee concurs with the adverse decision reviewed for the reasons stated below (OR) your application was found to satisfy the credit standards of the association, and is hereby approved.

> (Statement of reasons for credit review committee decision.)
>
> (Explanation of actions required, if any, in the event the committee does not concur with the lender's decision, i.e., "Your application is being forwarded to the account manager for processing.")

This decision by the committee is final.

Sincerely yours,

Phil S. Diller
Chairman, Credit Review Committee

PSD:rgs

IN THE CASE OF A DISTRESSED LOAN RESTRUCTURING APPLICATION INVOLVING MULTIPLE APPLICANTS:

cc: (Name of Co-makers)
    (Name of Guarantors)

THIS LETTER IS DRAFTED FOR EITHER NOTIFICATION THAT THE COMMITTEE CONCURS WITH THE DECISION OF THE LENDER OR THE COMMITTEE APPROVES THE LOAN/DISTRESSED LOAN RESTRUCTURING APPLICATION.

FIGURE 46

IV. Conditions of Sale or Lease

A. Non-Severability of Mineral Interests

In accordance with the Farm Credit Amendments Act of 1985, the District shall not sell the surface rights to real property acquired through foreclosure to any person without also selling all mineral rights acquired with the property.

B. Right of First Refusal

1. Generally

The Agricultural Credit Act of 1987 gives the previous owner a right-of-first refusal to lease or purchase agricultural real estate acquired through foreclosure or voluntary conveyance from a borrower who did not have the financial resources to sustain repayment of the loan.

2. Intent

The intent of this provision is to insure that the previous owner has an equal opportunity to repurchase or lease agricultural real estate acquired by the lender through foreclosure, dation or deed in lieu of foreclosure.

3. Application

a. The provisions apply to sales or leases achieved through private negotiations and/or public auctions, sealed bids, and any other type of competitive bidding process.

b. The provisions apply to all property in inventory regardless of the date acquired.

c. Any sales or leases which were substantially negotiated or reduced to a written contract on property acquired on or before January 6, 1988 will be consummated if the negotiations were completed or the contract accepted on or prior to February 18, 1988.

4. Definitions

a. Previous Owner

A borrower who had an interest in the property immediately prior to acquisition of title and, with certain exceptions, was personally liable for the debt.

b. Agricultural Real Estate

Real property that would be eligible as primary collateral for a loan, except rural residence security.

c. Accredited Appraiser

A Farm Credit System employee who has been delegated appraisal authority at Levels 5 and 6; or an independent appraiser/contractor who meets or exceeds the criteria and standards of Levels 5 and 6 appraisal authorities.

d. Different Terms and Conditions

Terms and conditions offered to a third party which materially differ from those extended to the previous owner, and which materially benefit the third party.

NOTE: Because the Farm Credit System is not required to finance the purchase by a previous owner, financing terms are not considered a term and condition of a sale.

V. Acquired Property Leases

A. Lease Philosophy

1. Generally

When leasing an Acquired Property, the Property Manager shall strive to "maximize income" from the property.

2. Rental Value

A rate equivalent to the appraised rental value as established by an accredited appraiser should be determined taking into consideration the general condition of the property, the local rates on property similar to that to be leased, and the eligibility of the property for government agricultural programs as determined from the local ASCS office.

3. Type of Rental Payment

a. Major source of rental payments are cash or crop share.

b. When necessary or advantageous, cash up front, letter of credit, crop share with a minimum, and other variations of cash and crop share rent may be utilized.

c. In extenuating circumstances it may be necessary to negotiate the performance of capital improvements in lieu of cash or crop share rent. Before entering into these types of contracts:

i. Determination must be made that proposed improvements will enhance the appearance and marketability of the property in an amount equal to or exceeding the amount credited toward the appraised rental value.

ii. Agreement as to the cost of the improvement must be reached and documented to insure that proper credit toward the normal rental value is made.

B. Pre-Leasing Procedures

1. Generally

Before offering a property for lease, information must be developed by initiating the following work-flow.

2. Leasing Plan

a. It should be determined how the property will be offered for lease: through a competitive bidding process or by private negotiations; as a whole or in parcels, tracts, etc.

b. The property should be appraised by an accredited appraiser consistent with the way the property will be offered, i.e., as a whole, in parcels/tracts, etc.

3. Terms and Conditions

Terms and conditions of the lease should be developed taking into consideration:

a. The appraised rental value of the property;

b. The type rental payment the institution is willing to accept;

c. Typical terms for the area; and

c. A lease term not to extend beyond one year, except in extenuating circumstances, and an expiration date that coincides with the end of the normal cropping season.

4. Election to Lease

When the information above has been fully developed, a decision should be made to lease the property.

C. Private Leases

1. Notification to Previous Owners

Within 15 days of the first election to lease all or any portion of a property, an appropriate lease letter should be sent to the previous owner(s) by certified mail.

This letter notifies the previous owner(s):

a. Of his right to lease the property at a rate equivalent to the appraised rental value and under the terms and conditions of the lease established and,

b. Of his right to offer to lease the property at a price less than the appraised rental value or its equivalent;

c. That he must respond within the specified time period; and

d. That failure to respond terminates any future right to lease granted by the Agricultural Credit Act of 1987.

2. Eligibility to Lease

   a. The previous owner must submit an offer to lease within 15 days of the date of the notice letter to be eligible to lease the property.

   b. If the previous owner offers to lease the property at the appraised rental value or its equivalent; and under the terms and conditions specified, it will be promptly determined if the previous owner:

      i. Has the resources available to conduct a successful farming operation; and

      ii. Can meet all payments, terms or conditions of the lease.

   c. If it is determined that the previous owner does not have the resources available to conduct a successful farming operation or cannot meet all payments, terms or conditions of the lease, he will immediately contact the Real Estate Division (Central Office); and

      i. Explain the basis for the determination;

      ii. Recommend that the offer be rejected.

   d. A Vice President or an Assistant Vice President of the Real Estate Division will make the final determination regarding the acceptance or rejection of the offer to lease.

   e. The previous owner will be promptly notified in writing of the rejection of the offer and the reasons therefor.

3. Mandatory Lease

   a. If it is determined that the previous owner does have the resources available to conduct a successful farming operation and can meet all payments, terms or conditions of the lease, an Acquired Property Lease (F-495) must be executed within 15 days of the date of the previous owner's written offer.

   b. When the lease is executed, the original will be forwarded to the Collateral Custodian and copies will be sent to the Real Estate Division and to Accounting.

4. **Offer to Lease by Previous Owner for Less Than Appraised Rental Value**

   a. **At the discretion of the respective property manager, an offer by a previous owner to lease for less than the appraised rental value may be accepted or rejected.**

   b. The property manager must notify the previous owner of the acceptance or rejection of the offer within 15 days of the receipt of the written offer to lease for less than the appraised rental value.

   c. If the property manager accepts the previous owner's offer to lease for less than the appraised rental value, a Bank-Owned Property Lease (F-495) must be executed within 15 days of the receipt of the previous owner's written offer.

   d. When the lease is executed, the original will be forwarded to the Collateral Custodian and copies will be sent to the Real Estate Division and to Accounting.

   e. If the property manager rejects the previous owner's offer to lease for less than appraised rental value, the written offer will be maintained in the file for future action as outlined below.

5. Duties of the Property Manager Upon Rejection of Offer of Previous Owner to Lease.

   If the property manager rejects the previous owner's offer to lease the property for less than the appraised rental value, the REM may not lease the property to any other person;

   - At a rate equal to or less than that offered by the previous owner, or

   - On different terms and conditions than those that were extended to the previous owner.

   without first offering the previous owner, under procedures in paragraph 6 below, an opportunity to lease the property at such rate or under such terms and conditions.

6. Notice to Previous Owner of Third Party Offer.

   a. The property manager shall notify the previous owner, by certified mail, of the opportunity to lease the property at the rate and/or under terms and conditions equal to those extended by the lender to a third party. Included in this notice will be an unsigned lease agreement stating term, conditions and price of the third party offer. This lease should be signed by the previous owner and returned with appropriate cash payment within the time limit of #6 B following.

b. The previous owner shall have 18 days from the date of such offer to agree to lease the property at such rate or under such terms and conditions as extended to a third party.

c. When the lease is executed, the original will be forwarded to the Collateral Custodian and copies will be sent to the Real Estate Division and to Accounting.

7. Failure of the Previous Owner to Respond

If the previous owner fails to respond within the specified time period to any of the notifications described above, any future right to lease is terminated.

D. Lease Collection

1. Generally

Property managers are charged with the collection and activities surrounding the collection of rents due as they are determined by Acquired Property leases. Guidelines for collection concerning Bank-Owned Property leases are as follows.

2. Crop Share Rents

When share rents are involved, property managers should inspect crops. In certain extenuating cases, it is suggested that you meet with the renter to inspect the crop, so that he will be aware of our anticipated share of the rent. Contacting questionable tenants in all cases and placing them on notice of our anticipated crop share is recommended.

3. Attempts to Collect Unsuccessful

When attempts to collect are not successful, the property manager should contact the designated state attorney in Legal Services for further collection efforts, including, if necessary, litigation. When contacting the state attorney, Real Estate Managers should send an outline of the situation, copies of any correspondence between themselves and the tenant, and any other pertinent information.

4. Eviction Proceedings

When eviction proceedings involving tenants are necessary, Real Estate Managers should accelerate efforts to have these tenants moved off the property. Should efforts to evict a tenant be unsuccessful, this too should be turned over to the appropriate state attorney within Legal Services. Again a memo outlining the situation should be provided.

5. Monitoring Reports

The Real Estate Manager will assist the Real Estate Division in monitoring the leasing of Acquired Property by providing a list of all rental contracts on farm properties on an annual basis. This list will include the property name, loan number, name of tenant(s), terms of the lease, total rent due, and total rent collected.

VII. ACQUIRED PROPERTY SALES

A. Objective

The Receiver's philosophy is to sell acquired properties within a reasonable time as near the appraisal value as possible. Limited demand in certain areas within the district is recognized, thus price reduction will be necessary and is expected to move many properties. Still negotiations should always be aimed at obtaining the top dollar available, especially on desirable units, keeping in mind that the ongoing cost to hold these properties will eventually outweigh the potential loss from a cut in price. Necessary adjustments in the asking price will be based on the judgment of the individual responsible. The frequency and extent of price reductions will be significantly increased for rough, unimproved or highly depreciable properties.

EXAMPLE: Top quality farms and recreational properties should, in the short-run, demand a price closer to the appraisal value than rough or marginal tracts.

B. Available Terms

1. Types of Transactions

Acquired property is marketed through the use of six types of transactions.

Cash sale

* PMM - 5 year balloon note - no personal liability.

* PMM - for 5 years converted to (applicable) variable with personal liability.

PMM - 3 year variable fixed rate loans with price and down payment determining interest rate.

PMM - current variable interest rate with no purchase of FLB stock or loan closing fees required.

Regular FLB loan.

* The fixed 5-year rate (approximately 150 points above treasury bills of like term) is subject to change quarterly. The maximum term of PMM loans is 25 years. Terms other than those outlined above must be Bank approved.

NOTE: FLBJR IS ONLY OFFERING CASH SALES AS OF THIS DATE.

Note: Financing terms offered in conjunction with public autions may not be consistent with the above stated terms.

2. Determining Acceptable Price

These terms combined with such considerations as 1) amount of down payment, 2) type property, 3) area demand, and 4) strength of credit package will be considered in determining the price the Bank is willing to accept.

C. Negotiations of Sales

1. Goal

The primary goal of acquired property negotiations is to obtain the top dollar available. But the overriding consideration in negotiating sales is that "the sale is in the best interest of the Receiver, in the opinion of the individual responsible.

The philosophy of this District is to sell properties for market value and we negotiate towards that goal. The properties that are rough, unimproved, held in inventory for a long period of time, or are highly depreciable are the basis for the authority to negotiate sales price downward due to productivity and marketability.

2. Restrictions

The following restrictions are applicable to the negotiating of sales:

a. Farm Credit System Employees and District Directors cannot purchase any property which, within the past 12 months was owned by a system institution. This is also applicable to Association's Directors if the property was acquired through the Association on whose board they serve. (Conflict of Interest Policy)

b. Acquired Property will be offered to the previous owner(s) in accordance with procedures described below.

D. Pre-Sale Procedures

1. Generally

Before offering a property for sale, information must be developed by initiating the following work flow.

2. Marketing Plan

a. The property manager should determine how the property will be offered for sale: through a competitive bidding process or by private negotiations, as a whole or in parcels, tracts, etc.

b. A determination should be made as to any physical preparation of the property required prior to sale.

c. The property should be appraised by an accredited appraiser consistent with the way the property will be offered, i.e. as a whole, in parcels or tracts, etc.

3. Terms and Conditions

Because the Banks are not required to finance the purchase by a previous owner, financing is not to be considered a term or condition of the sale.

4. Election to Sale

When the information above has been fully developed, the property manager should promptly elect to sell the property.

E. Private Sales

1. Notification to Previous Owner

Within 15 days of the property manager's first election to sell all or any portion of a property, the appropriate sale letter will be sent to the previous owner(s) by certified mail. This letter notifies the previous owner(s):

a. Of his right to purchase the property as offered at the appraised fair market value and under the terms and conditions specified; or

b. Of his right to offer to purchase the property as offered at a price less than the appraised fair market value; (This will be applicable if a third party has made an offer.)

c. That he must respond within the specified time period; and

d. That failure to respond terminates any future right to repurchase the property as it is presently being offered.

2. Eligibility to Repurchase

The previous owner must submit an offer to purchase within 33 days of the date of the notice letter to be eligible to repurchase the property.

3. Mandatory Sale

a. If the previous owner offers to purchase the property at the appraised market value and under the terms and conditions extended, the offer will be accepted.

b. The sale must be closed within 30 days. (See Closing Acquired Property Sales.)

NOTE: THERE IS NO OBLIGATION TO ACCEPT AN OFFER TO PURCHASE OF ONLY A PORTION OF THE PROPERTY OFFERED FOR SALE.

4. Offer to Purchase by Previous Owner for Less Than Appraised Market Value

a. At the discretion of the property manager, an offer by a previous owner to purchase for less than the appraised market value may be accepted or rejected.

b. Notice of the acceptance or rejection of the previous owner's offer to purchase the property at less than the appraised market value shall be by certified mail within 15 days of receipt of the offer.

c. If the offer is accepted, the sale must close within 30 days. (See Closing Acquired Property Sales.)

5. Duties of the Property Manager Upon Rejection of Offer of Previous Owner

If the property manager rejects the previous owner's offer to purchase the property for less than the appraised value, the lender may not sell the property to any other person;

At a price to or less than that offer by the previous owner, or

On different terms and conditions than those that were extended to the previous owner,

without first offering the previous owner, under procedures in paragraph 6, below, an opportunity to purchase the property at such price or under such terms and conditions.

6. Notice to Previous Owner of Third Party Offer

   a. The property manager shall notify the previous owner, by certified mail, of the opportunity to purchase the property at a price and/or under terms and conditions equal to those extended to a third party. Included in this notice will be an unsigned contract stating terms, conditions and price of third party offer. This contract should be signed by the previous owner and returned with appropriate earnest money within the time limit of #6 B following.

   b. The previous owner shall have 18 days from the date of notice letter to submit an offer to purchase the property at such price or under such terms and conditions as extended to a third party.

7. Prior to the expiration of the previous owner(s) right of first refusal, if an acceptable offer is received from a third party, the following statement should be included in the Offer to Purchase: "Subject to the previous owner(s) Right of First Refusal as set forth in the Agricultural Credit Act of 1987."

8. Failure of the Previous Owner to Respond

   If the previous owner fails to respond within the specified time period to any of the notifications described above, any future rights to repurchase are terminated unless the manner in which the property is offered for sale is altered.

F. Third Party Offers to Purchase and Financing

   1. The purchase of property is negotiated with the property manager.

2. If terms are reached after negotiation with a third party purchaser, the Offer to Purchase (F-543) will be signed by the purchaser. The offer is made subject to approval of financing by the purchaser if financing is desired. The method of completion of the Offer to Purchase determines the desired transaction by which the purchaser acquires the property.

3. Earnest money is collected from the purchaser upon completion of the Offer to Purchase by the purchase.

4. The property manager will complete the analysis of the Offer to Purchase on an Acquired Property Sale Worksheet (F-545). This analysis will determine whether the purchase price will be accepted, declined or recommended for approval.

5. If the purchase price exceeds the property manager's authority or if the Offer to Purchase deviates from the standard Offer to Purchase contract, it may be recommended for control purposes by telephone conference call or forwarded to the Real Estate Division for approval.

6. If the purchase price exceeds the Real Estate Division authority, or if the Offer to Purchase deviates from the standard Offer to Purchase Contract, it will be recommended to the Receiver for approval.

7. Upon acceptance of the Offer to Purchase, the property manager deposits earnest money collected with the Offer to Purchase and it is transmitted to the Bank.

8. Financing or Cash Sale:

   Purchasers have chosen on the Offer to Purchase to acquire the property by either cash sale or financing.

   a. Cash Sale

      The property manager notifies Real Estate Division of Sale Approval. The copies of all Offers to Purchase are reviewed upon receipt in the Bank by Real Estate Division for control purposes and are logged into the Acquired Property System log of sales.

   b. The accepted Offer to Purchase is often subject to one of our five methods of financing. In these cases, the property manager directs the Offer to Purchase with credit and financial data required for the loan to the Retail Credit Division for processing the loan application and credit package.

Real Estate Division's major role in the processing of cash sales and financing is to insure that the Credit Analyst process those in a timely manner. This is done by a monthly review of outstanding Offers to Purchase with the Credit Analyst.

G. Closing Acquired Property Sales

1. Loans which are approved will be closed in the Real Estate Management Center (REMC). The REMC will retain a designated Acquired Property attorney to prepare documents needed to close all purchases. The REMC forwards to attorney information to prepare these documents.
2. The REMC receives the documents from the Acquired Property attorney and schedules the closing.
3. The REMC closes the sale and prepares F-2291 for forwarding to Real Estate Division to notify of the closing. This form (F-2291) is a control for sale date, sale price and appraised value and acreage of balance of individual property remaining. Upon receipt of this form, the acreage is deleted from the Acquired Property Inventory.
4. Loan documents are forwarded to I.M.D.
5. REMC forwards certified copy of executed recorded deed (Act of Sale or Act of Sale and Mortgage - LA) to Real Estate Division for finalizing. The property file is closed in the Bank if it is a total sale of individual property.

Federal Land Bank of Jackson
and
Federal Land Bank Association of Jackson
IN RECEIVERSHIP

CERTIFIED MAIL

Date

Name
Address

RE: Previous Owner's Right of
First Refusal to Repurchase Property

Dear __________:

Pursuant to the Agricultural Credit Act of 1987, agricultural properties acquired by the Federal Land Bank of Jackson in Receivership (FLBJR) on or after January 6, 1988, are subject to the previous owner's right to repurchase such property under certain conditions. You have the opportunity to purchase the property described on the attached page at the appraised market value of $__________ in cash. FLBJR is not required to provide financing to the previous owner in connection with the sale of acquired property.

If you wish to purchase the property, we must receive within 33 days from the date of this letter, written notice of your election to purchase the property. If FLBJR does not receive such notice within the 33 day period, your right to purchase this property for appraised market value will terminate.

Should you choose to purchase the property at the appraised market value of $__________, a contract to sell will be executed. It is the policy of FLBJR to accept such an offer and close the sale within 30 days.

It is also your right to offer in writing to purchase the property for less than the amount previously stated. Said offer must be received within 33 days of the date of this notice. FLBJR has the right to accept or reject said offer. Should we accept your offer, a contract to sell will be executed. It is the policy of FLBJR to close such sales within 30 days of acceptance. If your offer is rejected, FLBJR may accept an offer from a third party at a higher price without prior notice to you. However, if FLBJR wishes to accept a third party offer to purchase the property at the price equal to or less than the price previously offered by you, or on materially different terms and conditions, we must notify you in order to ascertain your desire to purchase on equal terms.

Please note that this opportunity to purchase is a one time right and is only available to you.

If you are interested in discussing this matter further, please contact me at:

Phone Number: ____________________
Address: _________________________

Sincerely,

NOTE: Attachment should indicate individual tract descriptions and/or location, number of acres and appraised market value of each tract if the property is being offered in parcels or tracts. If the property is one contiguous tract, the attachment should state the number of acres and appraised market value.

Federal Land Bank of Jackson
and
Federal Land Bank Association of Jackson
IN RECEIVERSHIP

CERTIFIED MAIL

Date

Name
Address

RE: Previous Owner's Right of
First Refusal

Dear __________:

The Federal Land Bank of Jackson in Receivership (FLBJR) has received and accepted, subject to your right of first refusal, an offer on property previously acquired from you. Pursuant to the Agricultural Credit Act of 1987, you may repurchase this property for the same price, terms and conditions. If you wish to avail yourself of this right, you must execute the attached contract and return same with earnest money of $__________ within 18 days of the date of this notice.

Failure to return the executed contract and earnest money within the specified time period will terminate your rights as relates to this property.

If you wish to discuss this matter, please contact me at:

Phone Number: ________________
Address: ______________________

Sincerely,

Attachments

NOTE: The attachments should be an FLBJR offer to purchase totally filled out with equal price, terms and conditions as the third party.

Federal Land Bank of Jackson
and
Federal Land Bank Association of Jackson
IN RECEIVERSHIP

CERTIFIED MAIL

Date

Name
Address

RE: Previous Owner's Right of
First Refusal

Dear __________:

The Federal Land Bank of Jackson in Receivership (FLBJR) has received and accepted, subject to your right of first refusal, an offer to lease property previously acquired from you. Pursuant to the Agricultural Credit Act of 1987, you may lease this property for the same price, terms and conditions. If you wish to avail yourself of this right, you must execute the attached contract and return same with rental money of $__________ within 18 days of the date of this notice.

Failure to return the executed contract and rent money within the specified time period will terminate your rights as relates to this property.

If you wish to discuss this matter, please contact me at:

Phone Number: __________________
Address: ______________________

Sincerely,

Attachments

NOTE: The attachments should be an FLBJR lease totally filled out with equal price, terms and conditions as the third party.

Federal Land Bank of Jackson
and
Federal Land Bank Association of Jackson
IN RECEIVERSHIP

CERTIFIED MAIL

Date

Name
Address

RE: Previous Owner's Right of
First Refusal to Lease Property

Dear __________:

Pursuant to the Agricultural Credit Act of 1987, agricultural properties acquired by the Federal Land Bank of Jackson in Receivership (FLBJR) on or after January 6, 1988, are subject to the previous owner's right to lease such property under certain conditions. You have the opportunity to lease the property described on the attached page at the appraised rental value of $__________ in cash in advance.

If you wish to lease the property, we must receive within 18 days from the date of this letter, written notice of your election to lease the property. If FLBJR does not receive such notice within the 18 day period, your right to lease this property for appraised rental value will terminate.

Should you choose to lease the property at the appraised rental value of $__________, a contract to sell will be executed. Unless it is determined that you: (a) do not have the resources available to conduct a successful farming or ranching operation, or (b) cannot meet all of the payments, terms and conditions of such lease.

It is also your right to offer in writing to lease the property for less than the amount previously stated. Said offer must be received within 18 days of the date of this notice. FLBJR has the right to accept or reject said offer. Should we accept your offer, a contract to lease will be executed with the same exceptions as the previous paragraph. If your offer is rejected, FLBJR may accept an offer from a third party at a higher price without prior notice to you. However, if FLBJR wishes to accept a third party offer to lease the property at the price equal to or less than the price previously offered by you, or on materially different terms and conditions, we must notify you in order to ascertain your desire to lease on equal terms.

Please note that this opportunity to purchase is a one time right and is only available to you.

If you are interested in discussing this matter further, please contact me at:

Phone Number: ____________________
Address: ________________________

Sincerely,

NOTE: Attachment should indicate individual tract descriptions and/or location, number of acres and appraised rental value of each tract if the property is being offered in parcels or tracts. If the property is one contiguous tract, the attachment should state the number of acres and appraised rental value.

Form 495
Rev 4/84

BANK OWNED PROPERTY LEASE

STATE OF ____________________
COUNTY / PARISH OF ____________________

ID OF PROPERTY:
FORMER LOAN NO. ____________________
FORMER OWNER ____________________
FLBA ____________________

KNOW ALL MEN BY THESE PRESENTS, that, the FEDERAL LAND BANK OF JACKSON, hereinafter termed Landlord, hereby rents and leases to ______________________________ of ____________________, ____________________, hereinafter termed Tenant, the ☐ Farm, ☐ Rural Home, or ☐ Part-Time unit known as the ____________________ place, consisting of approximately ________ acres, located ________ miles ____________ from ______________, in the County or Parish of ____________________, State of ____________________, more particularly described as follows:

The term of this lease shall begin on the _____ day of ________________, 19___, and end on the _____ day of ________________, 19___, unless terminated sooner on the basis of subsequent provisions of this contract, and for the purpose of this lease the Landlord will deliver possession of the above described premises on or before the _______ day of ________________, 19___, unless present occupants refuse to vacate, in which event the Landlord agrees to take immediate legal action to secure possession and make delivery hereunder, if possible. This lease is given subject to any existing or outstanding mineral sales or leases, and upon the following terms and conditions:

THE LANDLORD RESERVES:

1. The privileges in favor of itself, or its grantees, at any time, to sell, and of going on the leased premises at any and all times for the exploration and/or extraction and removal of minerals, timber, turpentine, resin, gravel, sand, rock, stone, etc.; to look after its interests; and to have work done by its agents and/or employees without being liable for damages therefor.

2. The right to sell or contract to sell said property or any part thereof at any time during the term of this lease, with the following stipulations:

   A. If the property is a farm, or facility, and the term of the lease is for more than one year, the lease shall terminate on the same day and month as specified for the expiration date hereinbefore stipulated but of the calendar year in which said sale or contract of sale is made, upon mailing notice to the tenant at least thirty days prior to the date of termination.

   B. If a residential type property, (i.e., a Rural Home or Part-Time Farm unit), the lease shall terminate on the last day of the month following that of mailing notice to the tenant; said notice to be mailed at least thirty days prior to the date of termination.

THE TENANT COVENANTS AND AGREES:

1. To pay the Landlord ☐ monthly, or ☐ annual cash rental of $______________, payable with 10% interest from maturity on the first day of each month, if monthly, or on the ________ day of ____________________ of each year hereof, if annual; or earlier each year if the property is a farm and the crops are ready for harvest.

As a further consideration hereof the Tenant agrees to pay an additional 10% as attorney's fee if placed in the hands of an attorney for collection or if suit is brought hereon, and hereby waives all rights of exemption as to personalty from levy and sale under legal process for collection of this debt, whether given under the laws of this State or any other State of the Union.

2. To pay the Landlord each year hereof as promptly as harvested a share rental of the following crops delivered where indicated in merchantable condition free of all charges, expenses and/or liens to-wit:

________________ of all crops of ________________ delivered at ________________
________________ of all crops of ________________ delivered at ________________
________________ of all crops of ________________ delivered at ________________

3. To operate (if a farm) in full compliance with any Federal agricultural conservation or crop control program, existing during the term of this lease, and in no event to plant, to any crop, acreage in excess of the number of acres allotted to such crop on this farm under the rules and regulations prescribed by the Secretary of Agriculture. It being further agreed that under no circumstances will the Tenant voluntarily reduce allotted acreage without first having obtained the Landlord's written authorization therefor.

4. To immediately take possession of the premises described above on the date the Landlord has agreed to deliver uch possession as hereinabove provided.

5. To immediately surrender possession of said premises to the Landlord at the termination of this lease in as od condition as when let hereunder, usual wear and tear excepted, without written notice of any kind being required. ere is to be no tacit or implied reconduction of this lease.

6. Not to assign this lease or sub-let the leased property, in whole or in part, without the written consent of the ndlord, nor to permit or commit waste or depredation on or to the said leased premises.

7. To maintain all terraces in proper condition; to keep all drainage ditches open and clear of bushes and trash; o keep all buildings and fences located on said land in a good state of repair without compensation, unless agreed to in riting by the Landlord; with the understanding and as a part of the consideration hereof that any additions or improveents made on said premises are to become the property of the Landlord at the termination of this lease.

8. Not to obligate the Landlord or create any liability on its part for materials used for making repairs on the uildings, fences, and other improvements on the leased premises, or to contract any labor in connection therewith, the cost of either of which might constitute a lien against said leased premises, without first having the Landlord's written authorization therefor.

9. To sell in conjunction with and only by written permission of the Landlord promptly any crops grown on the leased remises and not withhold any of same, and the failure so to do or the secretion or sale of said crops for the purpose of evading the enforcement of the lien of the Landlord for said rental shall automatically make all rents due and payable immediately and subject said crops to the enforcement of the Landlord's lien.

IT IS FURTHER MUTUALLY AGREED AND UNDERSTOOD BY THE PARTIES HERETO:

1. That should the Tenant default in the payment of the rental hereunder, or breach, violate or fail to perform any f the terms and conditions hereof, the Landlord may terminate this lease and be entitled to take immediate possession of he leased premises without the necessity of notice of default and termination, which is hereby expressly waived by the enant, and may complete the operation and marketing of any crops until a sufficient amount of said crops have been sold to pay all rentals to accrue hereunder as well as for any advances made by the Landlord to said Tenant, and to enforce and secure the payment of which a first lien is hereby granted.

2. That if, for any reason, the Tenant is deprived of the possession of the leased premises under circumstances which would render the Landlord liable for damages, the Landlord's liability to the Tenant shall in no event exceed the amount of the rental stipulated herein.

3. That the Tenant accepts the possession of all buildings and/or improvements situated on the property leased herein as being in good order and repair, and hereby assumes all risks incident to any defect in the condition thereof, and agrees to make all necessary repairs to keep the said buildings and/or improvements in such good order.

4. That all terms and agreements of this contract are expressed herein and that there are no verbal conditions or representations made as a part hereof or as an inducement hereto, except as follows:

5. Should the Tenant fail to occupy the leased property, and/or, in the opinion of the Landlord, fail (if a farm property) to make normal seasonal progress toward farming operations within sixty days from the date on which the Bank delivers possession hereunder, the Landlord may, at its option, terminate this lease and take immediate possession of the leased premises by mailing a notice of such termination to the Tenant at the address set out above.

6. If there be more than one tenant party to this agreement, they and each of them bind themselves jointly, severally, and in solido for the payment of the rents and for the performance of the covenants and conditions herein stipulated.

7. It is understood and agreed that this lease shall not be binding until it is approved in writing by the Landlord on the form provided below and delivered to the Tenant, or mailed to the Tenant's address hereinbefore stipulated.

THUS DONE AND SIGNED IN DUPLICATE AT ______________________________, on this

the ________ day of ____________________________, 19___.

WITNESS: ____________________________________
Tenant

____________________________________ ____________________________________
Tenant

This lease is hereby accepted and approved, this the _____ day of ______________, 19___.

FEDERAL LAND BANK OF JACKSON

By____________________________________

OFFER TO PURCHASE

F-543
Rev. [illegible]

STATE OF ______________________________)   Name: ______________________________

COUNTY/PARISH OF ______________________)   Previous Loan No: ______________________

The undersigned ____ herein called the "Purchaser"), offers to purchase from the [illegible], as a tract and not by the acre, that certain real estate located in the County/Parish of ____________________, State of ____________________, as is more particularly described on the attached property description, containing approximately ____________ acres, more or less, which property shall include the land, all appurtenant rights, privileges, servitudes and easements, and any buildings and fixtures, except as specifically excluded herein, located on said property in their present condition.

THE TERMS AND CONDITIONS OF THIS OFFER TO PURCHASE ARE AS FOLLOWS:

1. The Purchaser agrees to pay for said property the sum of $ ______________________________, payable as follows:

(a) $ ____________________________ in cash or by check, subject to collection, upon the execution of this Offer to Purchase, the receipt of which is hereby acknowledged by the Seller, said funds constituting earnest money paid to Seller;

(b) $ ____________________________ in cash or by certified check upon the closing of this sale;

(c) $ ____
____
____
____
____
____

2. If the Purchaser fails to perform under the terms, conditions, and time limitations set forth herein, the Seller, at its option, may either take legal action to enforce this Offer to Purchase or accept the earnest money as liquidated damages and this Offer to Purchase will then be null and void. If the Seller fails to perform under the terms and conditions set forth herein, the Purchaser, at his option, may either take legal action to enforce this Offer to Purchase or accept the return of the earnest money and this Offer to Purchase will then be null and void.

3. As of the time of the closing of this sale, all taxes, maintenance charges, and/or assessments in connection with said property shall be prorated between the Seller and Purchaser.

4. That Seller will give Purchaser possession of the property upon the date of the closing of this sale, subject to any existing leases and/or parties in possession.

5. This Offer to Purchase shall remain irrevocable for a period of thirty (30) days from the date of its execution. As time is of the essence in the performance of this contract, the following time limitations are applicable:

a. When financing of the purchase has been requested of the Seller, Purchaser shall have up to, but no later than fourteen (14) days from the date of conditional acceptance of the offer to provide all loan application documentation required by the Seller.

b. When financing has been requested of the Seller, Purchaser shall have forty-five (45) days from the date of loan approval to close the sale.

c. When Offer to Purchase is a cash transaction, Purchaser shall have ninety (90) days from date of acceptance by Seller to close this sale.

Acceptance of Offer to Purchase and loan approval shall be in writing, signed by the Seller, and delivered to Purchaser or mailed to Purchaser at the hereinafter stated address.

6. Other than by separate written agreement leaving the risk on individually identified buildings with the seller until the closing of this sale, the risk of damage to the property described herein shall transfer at the execution of this agreement.

7. Seller warrants and represents that it has not caused or allowed any lien, defect or other encumbrance to be placed upon said property during the Seller's ownership of title, unless specifically set forth herein. Title shall be conveyed by Seller to Purchaser by a statutory/special/limited warranty deed as is more specifically described herein, subject to the following: (a) Existing rights-of-way, leases, parties in possession, servitudes, easements, restrictive covenants, taxes and assessments not yet due and payable, any and all Governmental rules, regulations and/or ordinances (including, but not limited to, building and zoning restrictions); (b) Conditions, reservations, restrictions, liens and encumbrances of record; (c) Any and all applicable statutory rights of redemption; (d) Any discrepancies, conflicts, encroachments, shortages in area, acreage and boundaries or other facts which would be shown by a correct survey; (e) Party wall rights, boundary fence agreements, or party sidewalks and driveways; and/or (f) All matters arising out of or in connection with the acts of the Purchaser or those claiming under or through the Purchaser; and/or (g) all oil, gas, coal, lignite, and/or all minerals, if any, are to be conveyed without warranty of any kind.

8. **DISCLAIMER/WAIVER/EXCLUSION OF WARRANTIES FOR CONDITION OF PREMISES:** The property, buildings and any improvements thereon shall be conveyed on an "AS IS" basis. The Seller makes no guaranty, warranty or representation, express or implied, as to the condition of any of said property, buildings or improvements located thereon. The Seller disclaims all warranties of merchantability and warranties of fitness for a particular purpose. Purchaser specifically agrees that Seller is not responsible for any repairs or damages to said property, buildings or improvements. Purchaser has personally inspected and examined the property, buildings and any improvements thereon and accepts the same in its "AS IS" and present condition.

9. **LIMITATIONS OF WARRANTY OF TITLE AND/OR WARRANTY AGAINST ENCUMBRANCES:** Title shall be conveyed by Seller to Purchaser by a Statutory/Special/Limited Warranty Deed whereby Seller shall warrant that it has not caused or allowed any lien, defect or other encumbrance to be place upon the property during the time period that the Seller has had full ownership of title, unless otherwise set forth herein, and Seller shall convey the property with no other warranties, express or implied, even as to return of purchase price, as to any acts occasioned by Seller's predecessors in title, but with full subrogation in and to all rights of action of warranty that Seller may have against Seller's predecessor in title. Any mineral interest to be conveyed to Purchaser, if any, as set forth above, shall be without warranty.

10. Purchaser agrees to execute any and all documents, in form reasonably acceptable to Seller, upon the terms and conditions stated herein to assist in the closing of the sale under this Offer to Purchase, including, but not limited to, Deed, Act of Sale, Act of Credit Sale, Note, Mortgage, Deed of Trust, Financing Statement, Security Agreement, and/or Loan Agreement, if applicable. In the event the Seller finances any part of the purchase price, the Purchaser agrees that the Seller can retain a vendor's ~~lien in the above~~ described Deed, Act of Sale or Act of Credit Sale to secure payment of the balance due on said purchase price, which vendor's lien shall be in ~~addition to the above~~ described Note and security documents.

11. Purchaser hereby agrees to pay all expenses, costs, and fees in connection with ~~the~~ sale, such as title ~~examination fees~~, title insurance, and surveys; however, and as the sole limitation thereto, Seller shall, at its own cost, prepare and record ~~these~~ documents mentioned in Section 10 as required by the Seller.

12. In the event Purchaser defaults or fails to perform any of the terms or conditions set forth herein, the Purchaser agrees to pay all reasonable attorney's fees, expenses and Court costs in connection with the enforcement of this Offer to Purchase.

13. This Offer to Purchase, if accepted, incorporates all prior agreements between the Seller and Purchaser, contains the entire and final agreement of the parties and cannot be changed except as by the written agreement of the Seller and Purchaser. Neither Seller nor Purchaser shall be bound by any terms, conditions, oral statements, warranties or representations not herein contained.

14. Each and every term, condition and provision contained in this Offer to Purchase and any other instrument related hereto is declared to be separate, distinct and severable. The provisions of this Offer to Purchase shall apply to and bind the heirs, executors, administrators, successors and assigns of the Seller and Purchaser. Further, as applicable, each plural noun, pronoun and verb may be read as singular and each singular noun, pronoun and verb may be read as plural and gender may be read as masculine, feminine or neuter.

15. This Offer to Purchase and/or any interests of Purchaser hereunder may not be assigned in whole or in part without the prior written consent of Seller.

16. If Agricultural Stabilization & Conservation Service (A.S.C.S.) division of crop bases and/or quotas are applicable to this sale, an executed agreement, designating crops and division method, shall be attached hereto.

17. The Purchaser acknowledges by his signature that he has read and understands this Offer to Purchase.

DATED this ________ day of ________, 19________.

WITNESSES:

____

____

____
Purchaser

____
Purchaser
Address:

____

____

____
County/Parish

ACCEPTANCE

The undersigned Seller accepts the Offer to Purchase hereinabove set forth and agrees to sell the property described therein on the terms and conditions hereinabove set forth, subject to subsequent approval of financing by Seller, if requested. The undersigned Seller hereby acknowledges receipt of the earnest money described in the Offer to Purchase.

DATED this ________ day of ________, 19 ________.

FEDERAL LAND BANK OF JACKSON IN RECEIVERSHIP

BY: R.E.W. ENTERPRISES, INC.

BY: ______________________________

PREPARED STATEMENT OF ROBERT G. VANWINKLE, CHAIRMAN, BOARD OF DIRECTORS, FARM CREDIT BANK OF TEXAS, SULPHUR SPRINGS, TX

Mr. Chairman. Members of the subcommittee. My name is Robert Vanwinkle. I am a dairy farmer from Sulphur Springs, Texas, and chairman of the board of the Farm Credit Bank of Texas. I have been associated with the 10th Farm Credit District since the 1960's.

Thank you for the opportunity to address this subcommittee concerning the Farm Credit Bank of Texas' compliance with the Agricultural Credit Act of 1987, as it relates to borrowers' rights and restructuring loans for distressed borrowers.

As a preamble to my comments, I will review briefly the philosophy of the Farm Credit Bank board of directors concerning working with distressed borrowers. Ever since the 10th Farm Credit District was established in 1917, the Bank has gone the extra mile to keep farmers on their land during tough economic times. Our history bears this out.

The Federal land bank, the forerunner of the Farm Credit Bank of Texas, has experienced very few foreclosures since the Depression years. It was not until 1984, when land values began to decline and a few borrowers caught hopelessly in the web of economic stress could not make their payments that the Bank was forced to foreclose on loans. Even then, the number of foreclosures was minimal in relation to our total borrowers and amount of loans outstanding (attachment A).

All of the current members of our board of directors in Texas have been involved with Farm Credit activities since the 1960's. The CEO of our Bank was hired by the Land Bank in 1962. Our District leadership is very much a part of the 10th District's prevailing philosophy where foreclosures are a last resort and *only* initiated after all other means of working with borrowers have failed.

Also, important in our initial comments today is an awareness on the subcommittee's part that the Texas Farm Credit District, during the last economic downturn and today, remains financially strong (attachment B). The board of directors and our Bank management are committed to using this financial strength to the benefit of *all* our borrowers. That is why, as this testimony will state, we work diligently with financially troubled borrowers to minimize their losses. We are pleased to report that, *so far,* we have not had the large numbers of delinquent and nonaccrual loans as have other Farm Credit Districts. Our reports show that our delinquent and nonaccrual loans peaked on December 31, 1986, at a total of 1,500 loans (attachment C).

Less than 3.5 percent of our 44,400 loans were past due or distressed even at what we hope was the peak of our problems. This percent is *very* small in relation to distressed loans in the majority of other Farm Credit Districts. From 95 to 97 percent of our borrowers during the past several years of economic recession have continued to make their payments on time.

We are fearful, however, that all agriculturally related problems have not surfaced in Texas. USDA's recent publication, "Agricultural Land Values and Markets," indicates that Texas' decline in land values has lagged most of the rest of the Nation by 3 to 4 years. According to USDA, the price of land per acre peaked in Texas in 1985. Many other States, particularly those in the Midwest, reached their peak in 1981 (attachment D).

Another interesting comparison is that, for example, in several States, land values peaked at between $1,500 to $2,000 per acre. In Texas, land at its peak reached $652 per acre. At least three points are noteworthy here. Each emphasizes the economic differences in Texas as compared to other States.

The first point is that Texans produce on their $652 per acre land the same commodities at the same market price that other States produce on their $1,500 an acre land.

Secondly, a 50 percent drop in land values for properties that have peaked at $2,000 per acre has a much more absolute dollar impact than a 50 percent drop in land valued at $650 an acre. Pertinent, also, is that land values in most of the rest of the country are increasing in value once again. Texas values continue to decline, with a further drop in value in 1988 of 3 percent or down to $466 per acre.

In comparing economic conditions, and, consequently, loan restructuring statistics in Texas with other Farm Credit districts, we may be comparing numbers, today, that are more appropriately compared with those of other districts of as long as 5 years ago. As indicated by USDA, Texas land values neither peaked as dramatically, nor thus far have fallen as traumatically, as in many other States. And, we are hopeful that they will not. We firmly believe that the Bank's conservative approach to lending and its land appraisal process, through a benchmark value system that lagged inflation, contributed significantly to keep in check the inflationary pressures on Texas rural land.

We alone, however, cannot take full credit for the economic stability of Farm Credit in Texas. Our borrowers should receive credit for this, also. Texas farmers for the most part are conservative. They are accustomed to one good crop-year out of maybe three or four. They experience, as a part of their way of life, drought, flood, hurricanes, hail and pestilence. As a result of predictable uncertainties, farmers in Texas do not tend to leverage themselves as highly as farmers in areas where good crop-years annually are more common.

Another very unique and different part of the Texas agricultural economy concerns our homestead laws. The State of Texas has always assured the individual the right to his home place. Two hundred acres carved out of a first lien make a significant difference in the amount of money loaned on a property and tend to make both lender and borrower more conservative.

Mr. Chairman, economic conditions, agricultural lending—all are very different in Texas from those in many other States. When comparing our district with others, these differences must be considered.

Another important point concerns a look behind the statistics that are published in the national Farm Credit System reports. The reporting process dictates that only those loans on which a monetary concession is provided are to be reported. In other words, under the Financial Accounting Standards Board, rule 15, only restructured loans that receive a forgiveness of debt or an interest rate concession are reported. Consequently, most of our loan servicing actions are never reported to the regulator and, consequently, never appear on the call reports.

In Texas, our work with distressed borrowers invokes a progressive process that includes: informal forbearances, payment date changes, reamortizations, refinancings, and partial releases.

From 1984 through 1987, prior to the Credit Act of 1987, the Farm Credit Bank of Texas' progressive loan servicing procedures helped many economically distressed borrowers. Much of what was required by the act was already a part of our standard procedure when the act became law. For example, as mentioned previously, the Bank's delinquent and nonaccrual loans peaked at 1,500 at yearend 1986. Yet during 1987 the Bank foreclosed on only 94 loans. The remaining were handled through other "work out" procedures such as those mentioned previously, or were still in some stage of forbearance.

In addition, during 1988 and through March of 1989, the Bank granted forbearances on 2,484 long-term mortgage loans. This means that approximately 5 percent of our borrowers were given more time to make their payments or had their original loan restructured without monetary concessions by the lender. These loans, because of the reporting definitions, are not reflected in the reports to our regulators; however, we do believe they are reflective of our desire to work with economically distressed borrowers and are important to this testimony.

Now, to specific issues related to distressed loan restructuring.

When the 1987 act became effective on January 6, 1988, the Farm Credit Bank of Texas imposed a general moratorium on foreclosures pending a consideration of borrowers' rights required under the new act (attachment E). This provided the opportunity for our borrowers in the foreclosure pipeline to be granted their borrower rights. The first notifications to distressed borrowers of their rights under the Texas District's Distressed Loan Restructuring Policy were mailed in March 1, 1989.

Also, the Bank immediately notified all previous owners of presently held Bank acquired property of their rights of first refusal (attachment F).

A total of 791 distressed borrowers were identified under the Bank's loan restructuring process and the Agricultural Credit Act of 1987. Each was sent a letter informing him of his borrowers' rights and giving him an opportunity to submit a plan that would return his operation to viability. Of the 791 notified, 255 borrowers submitted restructuring plans.

The Farm Credit Bank of Texas approved 190 of the 255 plans submitted for restructuring or almost 75 percent of the applications. Only 65, or 25 percent of the restructuring plans, were denied. Of the 255 borrowers who submitted a plan, only 23 requested any type of monetary concession.

Mr. Chairman, I mention this at this time because, as stated earlier in my testimony, only concessionary loans are reported as restructured loans. The report indicates that the Farm Credit Bank of Texas formally restructured 12 borrower loans in 1988. Under the FASB rules, this is true. But important to understand is that of the 23 requests for monetary concession, 12 or more than one-half were granted. Almost 94 percent of the borrowers who sent in restructure plans did not ask for monetary concession. They did ask for extra time with their loan payments, a reamortization or other type of formal or informal forbearance. Many of the 255 respondents stated in their applications that they did not want to be restructured or have any principal, interest or penalties forgiven (attachment G). In many cases, the borrowers had identified their own problems and were pursuing other alternatives for meeting their debt obligations.

The following comments address specific criticisms that have been directed at the Texas Farm Credit Bank.

One concerns the Farm Credit Bank of Texas' methods of determining appraisal values, especially as it relates to the "least cost" analyses for restructured loans. It has been alleged that Texas Farm Credit artificially imposes inflated values on land at the time of foreclosure through use of its own appraisers.

Mr. Chairman, this is not the case. Borrowers have the opportunity, during the Credit Review Committee process, to obtain their own independent appraisal from an accredited appraiser, if they are not satisfied with our appraisal. To date, only two borrowers have chosen to utilize this alternative. In both cases, our Bank staff agreed to use the appraisals conducted by the borrowers' certified appraiser. However, neither of these two loans were ever formally restructured, because in both cases the borrower chose to file bankruptcy, due to the demands of creditors secondary to the Farm Credit Bank of Texas.

From January through May of this year, the Farm Credit Bank of Texas sold 42 properties acquired through foreclosure. The Bank's recovery value, established at the time of foreclosure, was estimated at $6.9 million. The sales price received for these properties, which sold much later, was $7.2 million, more than 100 percent of the recovery value. If the Bank had been using unrealistically high appraisal values, we would not have been able to sell the acquired properties at a value higher than the recovery value established.

Let me assure you, again, that our goal is and always has been to work with borrowers. As indicated in this testimony, much of the work with these borrowers begins many months and even years prior to the borrower rights process required by the 1987 act. We, in fact, carry out many functions that are not mandatory related to working with borrowers.

One of which we are particularly proud concerns working with our State leadership to develop a mediation program for distressed borrowers. Through our work with State agencies and Texas Tech University at Lubbock, we were instrumental in obtaining $500,000 in Government funding for borrower/lender mediation in Texas. We believe strongly in the advantages of bringing all creditors to the table for negotiation as the attached letter shows (attachment H).

Mr. Chairman. Members of the subcommittee. While I have expressed to you the philosophy of the Farm Credit Bank of Texas Board and management with respect to dealing with distressed borrowers and our genuine efforts to implement the intent of Congress, we have taken additional measures to ensure the Bank's policies and procedures are working as intended. We engaged the Farm Credit System's external audit firm of Price Waterhouse to conduct an independent evaluation of our process. Their evaluation and opinion (attachment I) is attached and concludes that the Texas Farm Credit Bank's policies for restructuring distressed loans is in compliance with the 1987 act and that the Bank is in compliance with its policies.

Mr. Chairman, thank you for the opportunity to address this prestigious subcommittee. Your questions will be welcomed.

[Attachments A-I and exhibits A-C, follow:]

ATTACHMENT A

FARM CREDIT BANK OF TEXAS

DELINQUENCIES (FLB)

YEAR	NUMBER	LOANS OUTSTANDING	% LOANS OUTSTANDING
1981	110	38,946	.3
1982	35	40,325	.09
1983	50	39,939	.1
1984	64	39,893	.2
1985	114	38,937	.3
1986	1,284	35,258	3.6
1987	1,138	32,919	3.5
1988	1,158	31,584	3.7
May '89	1,130	31,215	3.6

FORECLOSURES (FLB)

YEAR	NUMBER OF FORECLOSURES	AMOUNT OF FORECLOSURES	LOANS OUTSTANDING	FORECLOSURES AS % OF LOANS OUTSTANDING
1981	2	231,070	38,946	.005
1982	3	358,698	40,325	.007
1983	5	98,508	39,939	.01
1984	6	399,176	39,893	.02
1985	28	4,999,464	38,937	.07
1986	74	13,844,886	35,258	.21
1987	94	21,127,599	32,919	.29
1988	91	19,662,158	31,584	.29
May '89	103	28,628,606	31,215	.33

Attachment B

Farm Credit Bank of Texas

1988 Annual Report

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Report of Management

The financial statements of the Farm Credit Bank of Texas are prepared by management, which is responsible for their integrity and objectivity, including amounts that must necessarily be based on judgments and estimates. The financial statements have been prepared in conformity with generally accepted accounting principles appropriate in the circumstances, except as noted. Other financial information included in this annual report is consistent with that in the financial statements.

To meet its responsibility for reliable financial information, management depends on the bank's accounting and internal control systems which have been designed to provide reasonable, but not absolute assurance that assets are safeguarded and transactions are properly authorized and recorded. The systems have been designed to recognize that the cost of controls must be related to the benefits derived. To monitor compliance, the internal review staff of the Farm Credit Bank of Texas audits the accounting records, reviews accounting systems and internal controls, and recommends improvements as appropriate. The financial statements are audited by Price Waterhouse, independent accountants, who also conduct a review of internal controls to the extent necessary to comply with generally accepted auditing standards. In addition, the bank is examined by the Farm Credit Administration.

The board of directors has overall responsibility for the bank's system of internal controls and financial reporting. The board consults regularly with management and reviews the results of the examinations. In the opinion of management, the financial statements are true and correct and fairly state the financial position of the Farm Credit Bank of Texas at December 31, 1988.

Robert G. Vanwinkle
Chairman of the Board

Donald R Rogge
Donald R. Rogge
Chief Executive Officer

Arnold R Henson
Arnold R. Henson
Chief Financial Officer

March 3, 1989

Message to Stockholders

Dear Stockholder:

Historic changes occurred in both Texas Farm Credit and in the system nationwide in 1988. It was a year of "firsts"; a time of striving to implement the 1987 Agricultural Credit Act (the 1987 Act) in an effective and efficient manner; a year to apply innovative approaches to financing agriculture and servicing our existing portfolio in the best interest of our stockholders; a time to maintain the tradition that has kept us financially viable through adverse economic periods.

As mandated by the 1987 Act, the Federal Land Bank of Texas and the Federal Intermediate Credit Bank of Texas merged on July 6, 1988, to form the Farm Credit Bank of Texas (FCB). The long-term and short-term lending functions of these two banks are now departmentalized within the bank as Agricultural Mortgage Lending Operations (AMLO) and Production Agriculture Lending Operations (PALO). Our district board of directors was particularly concerned that the merger be carried out with the least disruption of services to the associations and their members. Both AMLO and PALO divisions worked hard to ensure a smooth implementation which I believe has been accomplished. This complementary effort bodes well for the future. Although the FLBAs and PCAs have different lending authorities, they share a common objective to provide competitive rates, quality service and an available source of credit for the benefit of agriculture.

Additionally, the criteria for a National Bank for Cooperatives were established by legislation. Ten district co-op banks, along with Central Bank for Cooperatives, agreed to merge into the National Bank for Cooperatives, now called CoBank, effective January 1, 1989.

The system, originally composed of 37 banks, as a result of legislation was reduced to 16 banks — 11 Farm Credit Banks, the FICB of Jackson, the FLB of Jackson in Receivership, the National Bank for Cooperatives and two banks for cooperatives that elected not to merge into the CoBank.

Also, as required by the 1987 Agricultural Credit Act, the Farm Credit System Special Committee on Interdistrict Consolidation was formed to study and report to Congress on potential bank mergers within the system. Robert Vanwinkle, chairman of the FCB of Texas District board, serves on the committee. This committee will report on its progress to the Farm Credit Administration (FCA) and Congress in March 1989.

The 1987 Act also created the Federal Agricultural Mortgage Corporation, also known as "Farmer Mac." Farmer Mac is a federally-chartered instrumentality of the United States. It was created to attract new capital for the financing of agricultural real estate and to provide liquidity for agricultural lenders. The Interim Board of Directors of Farmer Mac was responsible for capitalizing the new entity in an amount of not less than $20 million. With support from our Texas Congressional delegation, it was my honor to be appointed by President Reagan to this interim board. As of December 31, 1988, capitalization was completed with the sale of 670,000 Class A Units for approximately $13 million to the private sector and 500,000 Class B Units for approximately $10 million to the Farm Credit System. The Texas District purchased $796,060 worth of Class B Stock. An ad hoc committee was formed in the Texas District to determine the method of stock allocation to associations, which is a prerequisite to becoming eligible for loan origination. The Permanent Farmer Mac Board of Directors, of which Mr. Vanwinkle is a member, will initially be adopting underwriting standards for loans and capitalization requirements for pooling facilities. We anticipate Farmer Mac will begin accepting loans in the third quarter of 1989.

Another major event of 1988 was our successful bid to purchase 17,000 loans for $940.4 million from the Federal Land Bank of Jackson in Receivership. With the purchase came a new charter, which includes the states of Alabama, Louisiana and Mississippi. This is the first time since their organization in 1917 that a Farm Credit district has expanded its territory. The consolidation means that the FCB will be providing long-term mortgage loans in the former Jackson District on a permanent basis.

Negotiations are underway to provide short-term lending services in the area as well, with the FICB of Jackson and First South and Northwest Louisiana PCAs. The 1987 Act allows associations in neighboring districts to join another Farm Credit district after a stockholder vote. Three PCAs in New Mexico have approached Texas about moving their affiliation from the Wichita Farm Credit District to Texas. Discussions are also underway with several PCAs in Oklahoma.

The expansion will allow us to introduce the Texas lending philosophy, which has worked so well for us these 70 years, to more farmers and ranchers. This activity manifests itself in our progressive approach to business opportunity, which is in direct contrast to the regressive mode in which many financial institutions are now operating. By diversifying our loan portfolio and increasing our quality loan volume, our fixed costs can be spread over a broader loan base. These factors will enable us to become even more competitive in the future and to continue providing an effective credit delivery system.

I sincerely believe that the same aggressive marketing of our product, and prudent approach to lending, which have been our strength in Texas, will return dependable credit to the Jackson District that has been particularly hard hit by the downturn in the agricultural economy.

FCA, as required by the 1987 Act, established minimum permanent capitalization rules during 1988 for system banks and associations. These rules require banks and associations to establish and maintain permanent capital at a minimum level of 7 percent of risk adjusted assets. I am pleased to report that the bank and most associations in this district met or exceeded the required level at December 31, 1988. This is particularly significant when you consider the economic hardships we and our borrowers have suffered during the past several years. Plans are being developed which will soon be implemented to ensure all associations meet the minimum requirement.

The 1987 Act also required FCA to prepare regulations establishing rules under which the bank and associations would develop capitalization bylaws. These proposed new bylaws are to provide the framework for the bank and each association to implement the new capital adequacy requirements. The bank's bylaws were approved by the district board in February. We believe the proposed bylaws are reflective of district philosophy and will permit the bank to operate within the regulatory requirements which have been established by FCA.

The bank has provided each association with a sample set of bylaws for consideration. These sample bylaws were developed in consideration of the new regulations, with their numerous requirements, and the bank's proposed bylaws. To meet regulatory requirements, each association should seek to have stockholder-approved bylaws by May 9, 1989. I have requested bank staff to provide any assistance needed by associations to accomplish this important and essential task.

The bank's key financial indicators showed steady improvement in 1988. We improved credit quality, controlled nonearning assets and reduced operating expenses, at both association and bank levels. As of December 31, 1988, our combined net income was $71.8 million, and our combined loan volume was $3.0 billion. Nonaccrual loans were $154.2 million on December 31, 1988, a $1.5 million increase over the $152.7 million in nonaccrual volume as of December 31, 1987. We reported to you last year that the 1987 Act, signed into law by President Reagan on January 6, 1988, gave us the authority to reverse in 1988 a controversial capital preservation payable to certain system banks. This payable was conditionally booked in the third quarter of 1986. A book entry reversal during 1988 contributed $72.4 million to the bank's reported net income.

In a related transaction, a capital preservation payable booked in the second quarter of 1986 was disposed of through a negotiated settlement by parties to the agreement. The negotiated settlement resulted in a discounted payment, saving our stockholders approximately $2.5 million. The combined resolution of these two separate, but related, items contributed $74.9 million in income to the bank during 1988. The reported net income of the bank was composed of $8.3 million from AMLO and PALO operations and $72.1 million from nonrecurring sources.

While the "big picture" in 1988 centered on the consolidation of the Texas and Jackson Districts and the merger of the FLB and FICB, the year also brought about advances and changes specific to existing long-term and short-term lending operations. Mike Davis, executive vice president of AMLO, and Paul Day, president of PALO, will detail these developments in their respective summaries, which follow.

In 1989, we will face a whole new array of complex challenges. However, the basic keys to success remain the same — strong marketing, prudent lending of a competitive product, constructive loan servicing and retention of our quality human resources. These will ensure that associations will continue to build financial viability for use by their member-owners.

Sincerely,

Donald R Rogge

Donald R. Rogge
Chief Executive Officer

Summary of 1988

Agricultural Mortgage Lending Operations

1988 was a year of great accomplishments for the AMLO division of the Farm Credit Bank of Texas. As you recall, we promised to measure all programs against one standard, that being, is it in the best interests of the stockholders, and are they the beneficiaries? There were four major achievements during the year, all of which met that standard.

The most obvious perhaps was the successful merger of the FICB and the FLB as required by the Agricultural Credit Act of 1987. We believe the AMLO division, as the successor to the Land Bank, continued to provide excellent service to its borrowers throughout that merger process.

The second of these achievements was the agreement by the associations to forego the interest earnings on their certificates of indebtedness. This unselfish action has directly benefited all borrowers through more favorable interest rates.

Third, the year saw the completion of the new Association Performance Standard System, which was introduced at the previous annual meeting. This program has now been implemented effective January 1, 1989, with 1989 serving as a trial run. The cornerstone of the program is the profitability model, and its measure of the contribution each association makes to the total. We believe this program will have a great impact on the future of this district, and will be essential in positioning our associations for the new competitive environment of the future in which Farmer Mac is expected to play a major role.

Finally, the bank dedicated extensive efforts to evaluating a possible acquisition of Federal Land Bank loans held by the Jackson bank, as well as servicing rights over that territory. The board decided such a venture would accrue substantial benefits to Texas stockholders, and elected to pursue that purchase. Subsequently, we were awarded the charter for that former district. We believe this acquisition will provide additional strength to AMLO operations, thus permitting greater flexibility to respond to ever changing market forces.

The bank reported net income of $78.6 million during the year from AMLO operations; however, $72.4 million of that income represents a book entry reversal of the third quarter capital preservation payable, as permitted under the 1987 Act. This is a nonrecurring item. There were other nonrecurring income (and expense) items that, when adjusted to earnings, resulted in an operating net income from AMLO lending operations of $6.5 million for 1988. It is critically important that operational judgments be driven by the need to improve upon the $6.5 million that was generated from lending operations, rather than looking strictly to a $78.6 million bottom line.

While there are a number of positive things occurring, we must maintain a watchful eye on present conditions. Interest rates have been on the rise virtually since we lowered the variable interest rate last August. The increase in borrowing costs since then has required us to make an adjustment in our interest rates. Effective March 1, 1989, the bank's variable interest rate was increased from 9.95 percent to 10.25 percent on farm loans and from 10.20 percent to 10.50 percent on rural residence and farm-related business loans. These rates continue to reflect the interest rate buydown afforded by your local association's participation in foregoing interest on its certificates of indebtedness with the bank. Were it not for that participation, the increase would have been more severe. We have been able to steadily reduce your variable interest rate since November 1, 1984, and regret that this increase in your interest rate has become necessary. It is our sincere hope that interest rates have reached their peak for this business cycle. Regardless, the increase was necessitated to strengthen the $6.5 million in earnings from AMLO lending operations.

AMLO will be confronted with many opportunities for achievement during the coming year. Foremost among these remains that of successfully addressing the association capitalization issue, and maintaining the local association as the center of financial strength in the future. Secondly, we will be engaged in the establishment of a credit delivery system to service the additional three-state territory. This means that associations will have to be established, chartered, capitalized, local boards elected, and then most importantly, all fully integrated into a single, unified district.

It is with a great deal of excitement and anticipation that we look forward to the coming challenges of 1989. We are blessed with an extremely talented, experienced and cohesive senior officer team, and together with the professionalism and dedication of the Federal Land Bank Association management and directors, we believe these challenges can be successfully met.

Sincerely,

Michael R. Davis

Michael R. Davis
Executive Vice President
Agricultural Mortgage Lending Operations

Summary of 1988

Production Agriculture Lending Operations

The year 1988 began with three primary challenges:

- return bank nonincome producing assets to income producing assets;
- help certain PCAs return to viability;
- maintain our competitive interest rates.

With the help of association boards and presidents, the bank made considerable progress in these areas. Substantial amounts of nonincome producing assets were converted to income producing assets, operating expenses were dramatically reduced, and competitive interest rate programs and rates were provided for PCAs and OFIs.

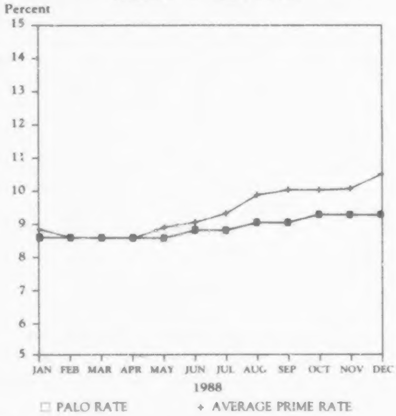
Approximately $40 million in nonearning assets were returned to income producing items, thereby improving annualized income by $4 million per year. Of this amount, $10 million resulted from operation of the bank's Special Assets Department. Also, significant steps were taken to collect the nonaccrual direct loans of Winter Garden and Richmond PCAs. In cooperation with the Winter Garden PCA board, Winter Garden assets were transferred voluntarily to the bank and immediately sold to Coastal Bend PCA, who was the highest bidder. This entire transaction was accomplished without disruption in service to borrowers, and improved the bank's income producing assets by $30 million.

Richmond asked FCA for a voluntary liquidation and is now under the control of a receiver appointed by the FCA. We have been working with the receiver to collect our loan with Richmond PCA so that it, too, can be returned to an income producing status.

New district credit standards were implemented in 1988. These standards were implemented with the objective of improving credit quality and reducing the level of noninterest earning assets. We are confident the PCAs and OFIs, as well as the bank, will benefit from these new procedures.

Operational efficiency and cost of credit delivery are concerns that the bank shares with PCAs. Efforts were made to streamline bank operations and staff. As a result, over $1.1 million in operating expenses were cut in 1988, when compared to 1987. If we are successful in having the Jackson FICB/PCA system and New Mexico and Oklahoma PCAs join our district operations, we no doubt will have even more opportunities to improve our cost per $100 of loans outstanding. Our plan is for all additions of territories to benefit PCA and OFI borrowers in the form of lower interest rates.

The key to keeping and attracting new borrowers is service, and the interest rate charged to borrowers is vital to that service. The chart below details the competitive rate provided to PCAs and OFIs in 1988.



PRODUCTION AGRICULTURE LENDING RATE

Compared to the Average Prime Rate

The bank was consistently at or below the prime rate all year. By year-end, we were nearly 100 basis points below prime. In addition, we offered two fixed interest rate programs for borrowers. These programs, together with the variable rate program, offer greater flexibility to the members in managing the financing of their operations.

The bank encountered many challenges during the year. We expect many more challenges and opportunities as we move into 1989 and the years to come. Your board and management will aggressively attack these challenges and take advantage of the opportunities that develop. Together, we can continue to provide good, dependable service to farmers and ranchers.

I appreciate your support during 1988. I pledge you my continued support and look forward to providing you the premier Farm Credit service in 1989.

Yours truly,

Paul S. Day

Paul S. Day
President
Production Agriculture Lending Operations

Disclosure Information and Index

Disclosures Required by Farm Credit Administration Regulations

DESCRIPTION OF BUSINESS

The Farm Credit Bank of Texas (the bank), the Federal Land Bank Associations (FLBAs), and Production Credit Associations (PCAs) in Texas (FLBAs and PCAs are collectively referred to as associations) are member-owned cooperatives which provide credit and credit-related services to or for the benefit of eligible borrowers/stockholders for qualified agricultural purposes in the state of Texas. The bank and the associations are lending institutions of the Farm Credit System (the system) as described further in Note 1, "Organization, Merger, Operations and Principles of Combination," to the accompanying financial statements. Additional information concerning management organization is also provided in Note 1.

The description of significant developments that had or could have a material impact on results of operations or interest rates to borrowers, acquisitions or dispositions of material assets, material changes in the manner of conducting business, seasonal characteristics, and concentrations of assets, if any, required to be disclosed in this section are incorporated herein by reference from Management's Discussion and Analysis of the bank included in this annual report to stockholders.

DESCRIPTION OF PROPERTY

The bank owns an undivided two-thirds interest along with the National Bank for Cooperatives in the district headquarters building situated on part of 16.8 acres of land on the northeast side of Austin, Texas. The bank's investment in property is further detailed in Note 9, "Premises and Equipment," to the accompanying financial statements.

LEGAL PROCEEDINGS

There are legal proceedings pending which, in the opinion of legal counsel and management, would not materially affect the financial position of the bank. Additional information concerning litigation in which the bank is involved and the potential effect on the financial statements is contained in Note 15, "Contingent Liabilities and Litigation," and Note 3, "Implementation of the Agricultural Credit Act of 1987," to the accompanying financial statements.

DESCRIPTION OF CAPITAL STRUCTURE

The bank is authorized to issue and retire certain classes of capital stock and surplus in its management of the capital structure. Details of the capital structure are described in Note 5, "Capital," to the accompanying financial statements.

DESCRIPTION OF LIABILITIES

The bank's debt outstanding is described in Note 11, "Consolidated Systemwide Bonds, Consolidated Bank and Other Bonds and Consolidated Systemwide Notes," and in Note 12, "Notes Payable and Lines of Credit," to the accompanying financial statements.

The bank's contingent liabilities and intrasystem financial assistance rights and obligations are described in Note 15, "Contingent Liabilities and Litigation," and Note 3, "Implementation of the Agricultural Credit Act of 1987," to the accompanying financial statements.

SELECTED FINANCIAL DATA

The selected financial data for the five years ended December 31, 1988, required to be disclosed is incorporated herein by reference from the "Five-Year Summary of Selected Financial Data," included in this annual report to stockholders.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

"Management's Discussion and Analysis," which precedes the financial statements, is incorporated herein by reference.

DIRECTORS AND SENIOR OFFICERS

The bank is managed by a member-elected board of directors and a senior management team comprised of the following individuals.

Name	Position	Elected/ Employed	Term Expires
Robert Vanwinkle	Chairman	1985	*
Billy Chesnut	Vice Chairman	1985	*
Don Blasingame	Director	1988	*
James A. McCarthy	Director	1988	*
B.L. Smith, Jr.	Director	1984	*
Donald Rogge	Chief Executive Officer	1961	
Paul Day	President - Production Agriculture Lending Operations	1973	
Mike Davis	Executive Vice President - Agricultural Mortgage Lending Operations	1972	
Robert Brown	Senior Vice President - Agricultural Mortgage Lending Operations — Credit	1966	
James Carter	Senior Vice President - Bank Administration	1982	
Mark Harbin	Senior Vice President - Agricultural Mortgage Lending Operations — FLBA Operations	1973	
Arnold Henson	Senior Vice President & Chief Financial Officer	1972	
Jim Lewis	Senior Vice President - Production Agriculture Lending Operations — Credit	1954	
Marsha Martin	Senior Vice President - Public Affairs and Human Resources Management	1970	
Tommie Stuart	Senior Vice President - Production Agriculture Lending Operations — PCA Operations	1967	
Gary Vaughn	Senior Vice President - Agricultural Mortgage Lending Operations — Loan Servicing	1961	
William Zimmerman	Senior Vice President - General Counsel and Corporate Secretary	1980	

*This is the group of directors at the time the FLB and the FICB of Texas were merged to form the bank. As provided in the 1987 Act, this initial board will serve a term ending no later than July 6, 1990. During its term, the initial board is to adopt an amendment to the bylaws providing for the composition and election of the permanent board of directors of the bank.

The experience of board and management is varied. A statement briefly describing the business and employment background of each director is provided for information purposes.

DIRECTORS

Robert Vanwinkle is a dairy farmer in Sulphur Springs, Texas, and retired as a senior vice president of the Federal Land Bank of Texas in 1982 with 19 years of Farm Credit experience.

Billy Chesnut is a farmer and rancher from Dalhart, Texas, who was president and secretary of the Dalhart Consumers Fuel Association of Dalhart, Texas, and director and past vice chairman of Amarillo Production Credit Association.

Don Blasingame is a financial and legislative consultant in Tyler, Texas, prior to which he was a vice president of the Federal Land Bank of Texas. Mr. Blasingame first joined the Farm Credit System as a loan officer for the Tyler Production Credit Association in 1947 and later became president of the Federal Land Bank Association of Tyler.

James A. McCarthy is a cotton, grain, sugarcane and cattle producer from Rio Hondo, Texas, who is a past director of the Production Credit Association of South Texas and is a member of the National Commission on Agricultural Finance.

B.L. Smith, Jr. is a livestock farmer from Paducah, Texas, who is a past director of the Federal Land Bank Association of Childress, the Farmers Co-op Gin of Paducah, and the Gate City Rural Electric Co-op of Childress.

SENIOR OFFICERS

All of the senior officers named above have been employed by the Farm Credit Bank of Texas in positions similar to their present positions for at least five years.

COMPENSATION OF DIRECTORS AND SENIOR OFFICERS

Directors of the Farm Credit Bank of Texas are compensated for service on the bank's board. Compensation is on a per day basis. Reimbursement of reasonable travel expenses while on bank business is also made. Information for each director is provided below:

Board Member	Number of Board Meeting Days Compensated	Number of Other Official Days Compensated	Total Compensation Paid in 1988
Robert Vanwinkle	46.5	49.0	$15,000
Billy Chesnut	50.5	55.5	15,000
Don Blasingame	48.0	55.0	15,000
James A. McCarthy	31.0	58.5	15,000
B.L. Smith, Jr.	48.0	43.5	15,000
			$75,000

(Some amounts may include days served in 1987 and compensated in 1988.)

The total compensation in 1988 to the senior officers named above in the aggregate, which consisted of 12 individuals, was $1,296,740. Disclosure of the total compensation paid to any officer in this aggregate is available to stockholders of the bank upon written request.

TRANSACTIONS WITH SENIOR OFFICERS AND DIRECTORS

The bank's policies on loans to and transactions with its officers and directors, required to be disclosed in this section, are incorporated herein by reference from Note 14, "Related Party Transactions," to the accompanying financial statements.

RELATIONSHIP WITH PUBLIC ACCOUNTANTS

There were no changes in independent public accountants since the prior annual report to stockholders, and there were no material disagreements with our independent public accountants on any matter of accounting principles or financial statement disclosure during this period.

Management's Discussion and Analysis

(dollars in thousands)

The following commentary explains the principal aspects of the combined financial position and results of operations of the Farm Credit Bank of Texas (the bank) and the Federal Land Bank Associations (the FLBAs) and Production Credit Associations (the PCAs) of the Tenth Farm Credit District (the district with FLBAs and PCAs collectively referred to as associations) and should be read in conjunction with the accompanying combined financial statements.

The major event of 1988 was the July 6, 1988, merger of the Federal Land Bank of Texas (the FLB) and the Federal Intermediate Credit Bank of Texas (the FICB) as required by the Agricultural Credit Act of 1987 to form the bank. The bank succeeded to all the rights and obligations of the merging banks pursuant to a plan of merger adopted by the common board of directors of the FLB and FICB. Prior to the merger, the accounting principles of both entities were consistent.

The bank is developing a philosophy to conduct its business transactions on the basis of patronage pools. The primary patrons of the bank are the FLBAs and the PCAs. The implementation of this business philosophy will include the pricing of loan products and the distribution of operating gains or losses by patronage pool. In determining the amount of patronage allocations, if any, the bank would take into account certain considerations on an equitable and rational basis that are attributable to each group of patrons and result in each patron receiving a fair share of the earnings and bearing a fair share of total expenses of the bank. These considerations include the portion of the bank's capital stock, loan volume, bad debt losses and other items deemed appropriate by the board that are attributable to each patron. The results of this business philosophy as it evolves more fully will be reflected in the district's future financial reports.

EARNING ASSETS
LOAN PORTFOLIO/INVESTMENTS

The Farm Credit Bank of Texas, through 44 FLBAs, 22 PCAs, and other financial institutions (OFIs), makes loans for long-term financing of real estate purchases, rural homes, seasonal operating and production financing, farm-related business financing, intermediate-term equipment financing, and property improvement and refinancing to qualified agricultural producers and harvesters and producers of aquatic products. Loans net of the allowance for loan losses represented 71.2 percent, 70.5 percent and 66.5 percent of total assets as of December 31, 1988, 1987 and 1986, respectively.

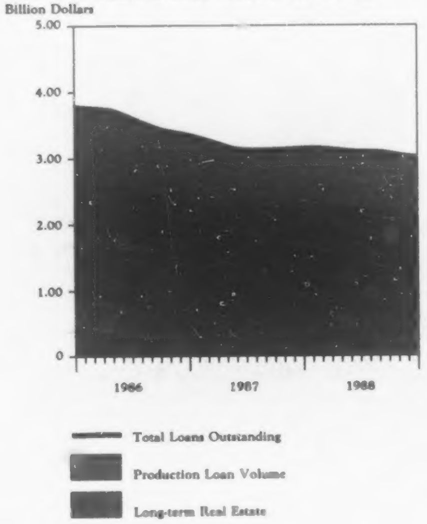
A comparison of the composition of the district portfolio as of December 31, 1988, 1987 and 1986 is shown in the following table, "Loan Composition."

Loan Composition

	1988	1987	1986
Farm and ranch real estate	**68.7%**	66.9%	65.6%
Operating and production financing	**24.0**	23.6	24.6
Rural home	**4.5**	4.5	4.7
Farm-related business	**.3**	.3	.3
Other	**2.5**	4.7	4.8
	100.0%	100.0%	100.0%

Loan volume at December 31, 1988, was $3.02 billion which is a decrease of $161 million (5.1 percent) from the $3.18 billion outstanding at December 31, 1987, and is a decline of $398 million (11.7 percent) from the $3.41 billion outstanding at December 31, 1986. Of the $398 million decline that occurred in the two years ended December 31, 1988, 53.5 percent was from a reduction in production lending operations and 46.5 percent was from a reduction in real estate mortgage operations. The graph, "Trend in Loan Volume Outstanding," presents the loan volume trends of the district over the past three years and also illustrates the seasonal pattern of the lending cycle for production loans in comparison to long-term real estate loans.

TREND IN LOAN VOLUME OUTSTANDING



The reason for the decline in real estate loans and for a portion of the decline in production loans is borrower desire to reduce debt expense in order to improve the profitability of their operation. Production loan volume has also declined as a result of uncompetitive interest rates by certain PCAs with high levels of nonearning assets and high operating cost ratios.

The stabilized economic conditions for agriculture in the district are beginning to be reflected in the credit quality and loan performance statistics of the loan portfolio. The following table, "Combined Credit Quality," shows the credit quality of the district for each of the past three years.

Combined Credit Quality
(as of December 31,)

	1988	1987	1986
Acceptable	85.3%	83.6%	85.8%
Substandard	13.7	15.1	12.8
Doubtful	.4	.5	.8
Loss	.6	.8	.6
Total	100.0%	100.0%	100.0%

The trend in assets which causes the greatest financial exposure to the district is shown in the following table, "Combined High-risk Lending Assets."

Combined High-risk Lending Assets
(as of December 31,)

	1988	1987	1986
Other property owned	$ 50,739	$ 36,029	$ 32,689
Nonaccrual loans .	$ 154,220	$ 152,680	$ 156,930
Restructured loans	$ 3,526	$ 1,158	$ 8,276
Other high-risk loans	$ 109,340	$ 129,469	$ 68,152

Management continues to aggressively manage these categories of assets to minimize losses. Management has reduced the estimate of the loan loss exposure inherent in the loan portfolio as is reflected in the trend of the allowance for loan losses, which at December 31, 1988, was $117 million or 3.9 percent of loans. This is a decrease of $44.9 million from the allowance for loan losses of $161.9 million at December 31, 1986, which was 4.7 percent of loans. The allowance for loan losses is considered adequate for the risk inherent in the loan portfolio and is fairly stated in relation to the combined financial statements taken as a whole. The change in the allowance during this two-year period is primarily from net charge-offs, which were $44.8 million on those loans previously identified by management as having loss exposure. The rate of charge-offs was .78 percent of average loans for 1988 and .64 percent of average loans for 1987.

On February 10, 1989, the bank completed the events and transactions necessary for the acquisition of the business operations of the FLB of Jackson which resulted in the acquisition of approximately 17,000 loans and the permanent long-term servicing rights for the states of Alabama, Mississippi and Louisiana for $940.4 million. This asset purchase is expected to have a positive impact on the district by allowing the operating cost of the district to be spread over a larger loan volume, thereby improving the profitability of the expanded district. Additional information on this transaction is contained in Note 3, "Implementation of the Agricultural Credit Act of 1987—District Organizational Restructuring," to the accompanying financial statements.

FUNDING SOURCES AND LIQUIDITY

The primary source of funds for the district is the sale of securities to investors through the Federal Farm Credit Banks Funding Corporation. The types and characteristics of these securities are described in Note 11, "Consolidated Systemwide Bonds, Consolidated Bank and Other Bonds and Consolidated Systemwide Notes," to the accompanying financial statements. During 1988, the bank issued $1.85 billion in consolidated systemwide bonds and $7.44 billion in discount notes through the Funding Corporation, compared with $1.99 billion and $5.00 billion, respectively, in 1987. As of December 31, 1988, the bank had $2.67 billion of bonds outstanding with an average effective interest rate of 9.57 percent and an average remaining life of 2.22 years. This compares with outstanding bonds of $2.74 billion having an average rate of 9.48 percent and average remaining life of 2.25 years as of December 31, 1987. Notes outstanding as of December 31, 1988, were $780.3 million and had an average effective rate of 8.86 percent, compared with $776.7 million at 7.60 percent one year earlier. Average interest-bearing liabilities outstanding during 1988 totaled $3.41 billion at an average rate of 8.77 percent, compared to $3.67 billion at 8.64 percent for 1987.

The district has implemented a liquidity policy which requires maintenance of cash and readily convertible investments to guard against interruption in its funding operations in the event the national markets are disrupted. This policy requires the level of cash and marketable investments on hand be adequate to fund at least 30 days of maturing obligations and normal operating requirements. The liquidity policy requires that this investment portfolio be diversified and of high quality.

Total cash and investments were $939.2 million, or 23.1 percent of total assets, as of December 31, 1988, compared to $1.07 billion or 24.9 percent of total assets at December 31, 1987.

The yield on the investment portfolio at December 31, 1988, was 9.5 percent, while the yield at December 31, 1987, was 8.46 percent. This increase in yield is reflective of changes in short-term market rates as the investment portfolio consists of assets with short-term maturities. The nature of the district's investment holdings are further disclosed in Note 8, "Cash and Investment Securities," in the accompanying financial statements.

The bank examines its interest rate risk on a monthly basis by using an asset/liability reporting technique called interest rate sensitivity gap analysis. Rate sensitivity gap analysis is a means of gauging the extent to which an institution's net interest margin is exposed to risk due to future changes in interest rates. Gap analysis focuses on the risk produced by the relative timing in which existing earning assets and rate-related liabilities can experience a change in rate.

Gap analysis involves classifying all earning assets and funding sources into time intervals according to their repricing characteristics. Repricing occurs when these assets and liabilities have their rates changed due to contractual terms such as floating rate instruments or when they amortize or mature and are replaced by new assets or liabilities priced at the prevailing market rate. The difference between the assets and liabilities in each repricing period is known as the "gap" for that repricing period. An institution is said to be asset sensitive when more assets than liabilities reprice in a given time interval and liability sensitive when more liabilities reprice than assets.

The following table, "Interest Rate Sensitivity Analysis," depicts the district's interest rate sensitivity gap analysis at December 31, 1988. The net interest rate sensitivity line depicts the district's incremental gap within each repricing period and a cumulative gap basis. The district is asset sensitive in the 1-30 day time range and the 91-180 day range due to the repricing of its variable rate loans. On a cumulative basis, the district is asset sensitive at the end of one year. This indicates that the district is well positioned to maintain a relatively stable lending rate in a rising interest rate environment while ensuring the continued adequacy of its net interest margin.

Interest Rate Sensitivity Analysis
as of December 31, 1988
(dollars in thousands)

	1-30 Days	31-90 Days	91-180 Days	181-365 Days	Subtotal	1-5 Years	5+ Years	Total
Earning Assets:								
Total loans	$ 867,959	$ 7,483	$1,932,531	$ 6,237	$2,814,210	$ 4,764	$ 196,613	$3,015,587
Total investments	755,278	155,000	12,000	—	922,278	3	1	922,282
Total earning assets ..	1,623,237	162,483	1,944,531	6,237	3,736,488	4,767	196,614	3,937,869
Sources of Funds:								
Total interest-bearing funds	990,992	577,540	361,806	222,343	2,152,681	1,098,284	196,456	3,447,421
Effect of interest rate swap	—	175,000	—	—	175,000	(175,000)	—	—
Lendable net worth ...	—	—	—	—	—	—	490,448	490,448
Total sources of funds .	990,992	752,540	361,806	222,343	2,327,681	923,284	686,904	3,937,869
Net interest rate sensitivity	632,245	(590,057)	1,582,725	(216,106)	1,408,807	(918,517)	(490,290)	—
Cumulative sensitivity ..	$ 632,245	$ 42,188	$1,624,913	$1,408,807	$1,408,807	$ 490,290	$ —	$ —

CAPITAL RESOURCES

Statutory provisions requiring borrower equity purchases combined with a history of growth in surplus through retained earnings have resulted in most district institutions being able to maintain a strong capital position in relationship to assets. The capital position of the district at December 31, 1988, of $526,338 is an increase of $57,557 (12.3 percent) over the December 31, 1987, capital position of $468,781. This positive change is primarily due to net income of $71,810 during 1988, with reductions from net-stock retirement of $14,127 and the payment of cash patronage distributions of $126.

An analysis of the trend in the district's capital ratios follows:

	1988	1987	1986
Capital as a percent of net loans	18.2	15.4	14.2
Capital as a percent of assets	12.9	10.9	9.4

The district will be presenting to stockholders new capitalization bylaws during 1989 in response to the Agricultural Credit Act of 1987, which requires stockholder approval of bylaws for capitalization that will provide for permanent capital that will enable their respective institutions to meet capital adequacy standards established by the Farm Credit Administration (the Farm Credit System regulator).

In addition, to capitalize the loans purchased from the FLB of Jackson in Receivership, those borrowers with loans with the former FLB of Jackson will be offered an opportunity to become stockholders in the district by the purchase of stock in the bank.

It is the expectation of management that the required bylaws on capitalization will be approved by substantially all district institutions and an adequate number of the borrowers from the Jackson loan purchase will become district stockholders, with the result that there would not be a material reduction in the measure of capital to assets and loans. A more detailed discussion of district capitalization issues is contained in Note 5, "Capital," to the accompanying financial statements.

RESULTS OF OPERATIONS

Net income for 1988 of $71.8 million is an increase of $43.5 million over the 1987 net income of $28.3 million, an increase of 153 percent. The primary cause of this increase is the return of financial assistance previously provided to other Farm Credit system institutions. An analysis of the changes in the major components in net income follows:

Changes in Components of Net Income (Loss)

	1988	1987	1986
Prior period net income (loss)	$ 28,336	$ (103,576)	$ (66,026)
Increase (decrease) in net interest income..........	(8,482)	(19,930)	1,477
(Increase) decrease in provision for loan losses	(14,814)	41,245	20,360
Increase (decrease) in other income/expense, net	(2,529)	1,430	(141)
(Increase) decrease in operating expenses.........	3,224	518	(3,369)
(Increase) decrease in other property owned activity....	4,919	(2,054)	(3,231)
Change in financial assistance to other Farm Credit institutions.......	62,844	113,511	(96,541)
(Increase) decrease in income tax	(1,688)	(2,808)	4,199
Extraordinary loss in 1985 on early extinguishment of debt..........	—	—	39,696
Current period net income (loss)..	$ 71,810	$ 28,336	$ (103,576)

Net interest income as a percentage of average earning assets was 1.54 percent in 1988, 1.63 percent in 1987, and 1.95 percent in 1986. An analysis of the interest rate spread (interest rate on earning assets less interest rate on interest-bearing liabilities) is shown in the following table, "Interest Rate Spread."

Interest Rate Spread

	1988	1987	1986
Interest rate on:			
Total earning assets.........	9.28%	9.13%	9.88%
Total interest-bearing liabilities	8.91	8.64	9.13
Interest rate spread	.37%	.49%	.75%

The reduction in 1988 net interest income and the decrease in net interest spread is primarily attributable to a decline in accrual assets of $298.6 million while debt declined only $235.5 million, a negative difference of $63.1 million. This was caused by an increase in other property owned, $14.7 million, noncash declines in accrual loans from net charge-offs, $24.0 million, an increase in nonaccrual loans of $1.5 million and the purchase of $36.9 million of Financial Assistance Corporation stock of which an estimated $25.9 million will be returned in October 1989. An analysis of the effect of these changes in loan volume and interest rates on net interest income for 1988 follows in the table, "1988 Change in Net Interest Income."

1988 Change In Net Interest Income

	Interest Income	Interest Expense	Net Interest Income
1988	$ 365,929	$ 305,015	$ 60,914
1987	387,466	318,070	69,396
Increase (decrease)	$ (21,537)	$ (13,055)	$ (8,482)
Due to:			
Like volume reduction	$ (23,734)	$ (22,435)	$ (1,299)
Asset decrease over liability decrease .	(3,452)	—	(3,452)
Interest rates earned and paid	5,649	9,380	(3,731)
Increase (decrease)	$ (21,537)	$ (13,055)	$ (8,482)

In comparison to the reversal of provision expense of $7.4 million in 1987, the district recorded provision expense of $7.4 million in 1988. There was a provision requirement of $7.9 million to restore the allowance for loan losses considered necessary to absorb estimated losses on the production lending portfolio as net charge-offs of $14.3 million were recorded in 1988 for this business segment. On a combined basis (bank and FLBAs) there was a small negative provision of $.5 million on long-term real estate loans.

Noninterest rate expenses (operating expenses), which exclude provision for loan losses and financial assistance to other Farm Credit System institutions, were approximately 1.21 percent, 1.20 percent and 1.12 percent of the district's average earning assets for 1988, 1987, and 1986 respectively. The 1988 operating expenses of $47.6 million represent a reduction of $3.2 million (6.3 percent) from the $50.8 million in operating expenses incurred in 1987. The major reductions occurred in professional fees, $1.6 million, occupancy and equipment expenses, $.8 million, and supervisory and exam expenses, $.7 million.

As stated previously, the major reason for the increase in net income for 1988 is the reversal of accounts payable for financial assistance accrued to other Farm Credit institutions in 1986. Of the $113.5 million expense recorded upon activation of system capital preservation agreements in 1986, $74.9 million was reversed in 1988. This gain was offset by the need to provide $12.1 million assistance as a result of operational implementation of the Farm Credit System Assistance Board and the Farm Credit System Financial Assistance Corporation. The net result was a positive impact to net income of $62.8 million or 87.5 percent of net income.

Farm Credit Bank of Texas and
Texas District Associations

Five-Year Summary of Selected Combined Financial Data

(dollars in thousands)

	1988	1987*	1986*	1985*	(Unaudited) 1984*
Combined Statement of Condition					
Loans	$3,015,587	$ 3,176,943	$ 3,413,835	$ 3,923,492	$ 3,991,738
Allowance for loan losses	116,993	133,636	161,854	145,536	97,286
Net loans	2,898,594	3,043,307	3,251,981	3,777,956	3,894,452
Cash and investments	939,211	1,073,242	1,410,177	560,908	278,519
Other property owned, net	50,739	36,029	32,689	18,830	11,186
Other assets	182,255	163,510	197,224	212,107	236,501
Total assets	$4,070,799	$ 4,316,088	$ 4,892,071	$ 4,569,801	$ 4,420,658
Obligations with maturities of one year or less	$1,977,252	$ 2,324,505	$ 2,808,177	$ 2,297,580	$ 1,717,748
Obligations with maturities longer than one year	1,567,209	1,522,802	1,622,314	1,670,183	2,024,901
Total liabilities	3,544,461	3,847,307	4,430,491	3,967,763	3,742,649
Capital stock and participation certificates	211,535	224,036	243,878	279,350	288,661
Allocated equities	1,284	2,456	2,173	3,882	3,397
Unallocated surplus	313,519	242,289	215,529	318,806	385,951
Total capital	526,338	468,781	461,580	602,038	678,009
Total liabilities and capital	$4,070,799	$ 4,316,088	$ 4,892,071	$ 4,569,801	$ 4,420,658
Combined Statement of Operations					
Net interest income	$ 60,914	$ 69,396	$ 89,326	$ 87,849	$ 69,079
Provision (negative) for loan losses	7,366	(7,448)	33,797	53,807	12,528
Other (income) expenses, net	(18,262)	48,508	159,105	60,372	34,306
Extraordinary loss	—	—	—	39,696	—
Net income (loss)	$ 71,810	$ 28,336	$ (103,576)	$ (66,026)	$ 22,245
Combined Key Financial Ratios					
Return on average assets	1.78 %	.56 %	(2.22)%	(1.47)%	.53 %
Return on average capital	14.31 %	6.15 %	(19.29)%	(10.31)%	3.37 %
Net interest income as a percentage of average earning assets	1.54 %	1.63 %	1.95 %	2.01 %	1.72 %
Capital to assets	12.93 %	10.86 %	9.44 %	13.17 %	15.34 %
Debt to capital (:1)	6.73	8.21	9.60	6.59	5.52
Net charge-offs to average loans	.78 %	.64 %	.48 %	.10 %	.09 %
Allowances for loan losses to loans	3.82 %	4.21 %	4.74 %	3.71 %	2.44 %
Other					
Net income distributed					
Cash dividends	$ —	$ 6	$ 4	$ 218	$ 3,774
Cash patronage refunds	$ 126	$ 47	$ (61)	$ 206	$ —
Capital stock	$ —	$ 1,523	$ —	$ —	$ 913
Allocated equities	$ 454	$ 424	$ (242)	$ 695	$ 338

*Restated for the merger of the Federal Land Bank and the Federal Intermediate Credit Bank.

Farm Credit Bank of Texas and
Texas District Associations

Combined Statement of Condition

(dollars in thousands)

December 31,

	1988				1987*	1986*
	Farm Credit Bank of Texas	Federal Land Bank Associations	Production Credit Associations	Combined★	Combined★	Combined★
Assets						
Loans	$2,901,695	$ —	$ 725,697	$3,015,587	$ 3,176,943	$ 3,413,835
Less allowance for loan losses	47,836	37,755	31,402	116,993	133,636	161,854
Net loans	2,853,859	(37,755)	694,295	2,898,594	3,043,307	3,251,981
Cash and cash equivalents	890,071	112,855	3,477	896,207	946,654	1,342,886
Investment securities	40,000	3,004	—	43,004	126,588	67,291
Notes receivable	—	—	—	—	1,679	7,973
Accrued interest receivable	88,890	—	22,593	106,895	114,397	137,059
Due from Financial Assistance Corporation	19,898	—	6,032	25,930	—	—
Other property owned, net	40,588	(520)	10,671	50,739	36,029	32,689
Premises and equipment, less accumulated depreciation	20,371	4,821	6,964	32,156	34,131	36,019
Other assets and deferred charges	25,590	181,005	80,952	17,274	13,303	16,173
Total assets	$3,979,267	$ 263,410	$ 824,984	$4,070,799	$ 4,316,088	$ 4,892,071
Liabilities						
Consolidated systemwide bonds	$2,584,207	$ —	$ —	$2,584,207	$ 2,653,754	$ 2,911,508
Consolidated bank and other bonds	82,044	—	—	82,044	87,100	165,800
Consolidated systemwide notes	780,310	—	—	780,310	776,687	1,055,386
Notes payable	110,850	3,000	609,565	860	165,428	112,219
Accrued interest payable	72,062	—	5,126	72,099	67,998	73,262
Financial assistance to other Farm Credit System institutions	5,618	—	106	5,724	80,193	97,085
Dividends and patronage refunds payable	—	—	64	64	87	67
Other liabilities	8,412	11,521	10,492	19,153	16,060	15,164
Total liabilities	3,643,503	14,521	625,353	3,544,461	3,847,307	4,430,491
Contingent liabilities	—	—	—	—	—	—
Capital						
Class A capital stock	—	—	1,027	1,027	1,041	1,164
Voting capital stock	—	119,909	77,186	197,095	207,788	225,300
Class D capital stock	—	—	5,994	—	—	—
Participation certificates	12,627	7,544	1,905	13,413	15,207	17,414
Capital stock purchased by associations	175,806	—	—	—	—	—
Surplus						
Allocated	68,538	—	1,284	1,284	2,456	2,173
Unallocated	78,793	121,436	112,235	313,519	242,289	215,529
Total capital	335,764	248,889	199,631	526,338	468,781	461,580
Total liabilities and capital	$3,979,267	$ 263,410	$ 824,984	$4,070,799	$ 4,316,088	$ 4,892,071

The accompanying notes are an integral part of these financial statements.

*Restated for the merger of the Federal Land Bank and the Federal Intermediate Credit Bank.

★Amounts are net of intercompany transactions.

Farm Credit Bank of Texas and
Texas District Associations

Combined Statement of Operations

(dollars in thousands)

Year ended December 31,

	1988				1987*	1986*
	Farm Credit Bank of Texas	Federal Land Bank Associations	Production Credit Associations	Combined★	Combined★	Combined★
Loans	$ 283,564	$ —	$ 73,640	$ 304,941	$ 322,867	$ 396,644
Investment securities	60,818	785	—	60,818	63,969	54,614
Other	160	10	—	170	630	397
Total interest income	344,542	795	73,640	365,929	387,466	451,655
Consolidated systemwide bonds	226,711	—	—	226,711	255,363	286,403
Consolidated bank and other bonds	6,589	—	—	6,589	8,754	12,849
Consolidated systemwide notes	63,118	—	—	63,118	39,523	50,185
Notes payable and other	9,364	—	55,337	8,597	14,430	12,892
Total interest expense	305,782	—	55,337	305,015	318,070	362,329
Net interest income	38,760	795	18,303	60,914	69,396	89,326
Provision (negative) for loan losses	945	1,800	4,013	7,366	(7,448)	33,797
Net interest income (loss) after provision for loan losses	37,815	(1,005)	14,290	53,548	76,844	55,529
Fees for financially related services and loan origination	909	358	830	2,097	2,529	2,453
Distribution of earnings	—	52,343	—	—	—	—
Miscellaneous income, net	4,156	8,127	1,396	4,012	6,109	4,755
Total other income	5,065	60,828	2,226	6,109	8,638	7,208
Salaries and employee benefits	10,803	7,366	11,695	29,864	29,464	30,558
Occupancy and equipment	2,622	979	1,427	5,028	5,803	5,556
Other operating expense	14,512	1,263	4,940	12,702	15,551	15,222
Expense on other property owned activity	81	308	954	1,343	6,262	4,208
Financial assistance provided to (returned from) other Farm Credit System institutions	(65,492)	—	2,648	(62,844)	—	113,511
Total other expense	(37,474)	9,916	21,664	(13,907)	57,080	169,055
Income (loss) before income taxes	80,354	49,907	(5,148)	73,564	28,402	(106,318)
Provision (benefit) for income taxes	—	—	1,754	1,754	66	(2,742)
Net income (loss)	$ 80,354	$ 49,907	$ (6,902)	$ 71,810	$ 28,336	$ (103,576)

The accompanying notes are an integral part of these financial statements.
*Restated for the merger of the Federal Land Bank and the Federal Intermediate Credit Bank.
★Amounts are net of intercompany transactions.

Farm Credit Bank of Texas and
Texas District Associations

Combined Statement of Changes in Capital

(dollars in thousands)

	Capital Stock	Participation Certificates	Surplus		
			Allocated	Unallocated	Total
Balance at December 31, 1985*	$ 254,345	$ 25,005	$ 3,882	$ 318,806	$ 322,688
Net loss	—	—	—	(103,576)	(103,576)
Capital stock/participation certificates issued	79,049	1,512	—	—	—
Capital stock/participation certificates and allocated surplus retired	(106,930)	(9,103)	(1,467)	—	(1,467)
Dividends declared	—	—	—	(4)	(4)
Patronage distributions:					
Cash	—	—	—	61	61
Capital	—	—	(242)	242	—
Balance at December 31, 1986*	226,464	17,414	2,173	215,529	217,702
Net income	—	—	—	28,336	28,336
Capital stock/participation certificates issued	83,235	2,393	—	—	—
Capital stock/participation certificates and allocated surplus retired	(100,870)	(4,716)	(188)	—	(188)
Dividends declared	—	—	—	(6)	(6)
Patronage distributions:					
Cash	—	—	47	(47)	—
Capital	—	116	424	(1,523)	(1,099)
Balance at December 31, 1987*	208,829	15,207	2,456	242,289	244,745
Net income	—	—	—	71,810	71,810
Reclassification of allocated surplus held by OFIs to participation certificates	—	1,626	(1,626)	—	(1,626)
Capital stock/participation certificates issued	91,599	2,397	—	—	—
Capital stock/participation certificates retired	(102,306)	(5,817)	—	—	—
Patronage distributions:					
Cash	—	—	—	(126)	(126)
Capital	—	—	454	(454)	—
Balance at December 31, 1988	$ 198,122	$ 13,413	$ 1,284	$ 313,519	$ 314,803

The accompanying notes are an integral part of these financial statements.

*Restated for the merger of the Federal Land Bank and the Federal Intermediate Credit Bank.

Farm Credit Bank of Texas and
Texas District Associations

Combined Statement of Cash Flows

(dollars in thousands)

Year ended December 31, 1988

Cash Flows from Operating Activities:	
Interest received	$ 375,266
Interest paid	(303,170)
Cash paid to suppliers and employees	(87,645)
Miscellaneous income received (net)	4,663
Net cash used in operating activities	(10,886)
Cash Flows from Investing Activities:	
Principal collected on loans	1,688,804
Loan disbursements	(1,587,486)
Investment securities purchased	(51,000)
Investment securities matured	134,584
Fixed asset expenditures	(903)
Proceeds from sales of other property owned	8,673
Decrease in notes receivable	1,679
Other, net	12,313
Net cash provided by investing activities	206,664
Cash Flows from Financing Activities:	
Consolidated systemwide bonds issued	1,782,992
Consolidated systemwide bonds retired	(1,849,171)
Consolidated bank and other bonds issued	91,221
Consolidated bank and other bonds retired	(96,428)
Consolidated systemwide notes issued	7,378,647
Consolidated systemwide notes retired	(7,375,022)
Capital stock and participation certificates issued	93,996
Capital stock and participation certificates retired	(108,123)
Decrease in other notes payable	(162,681)
Other, net	(1,656)
Net cash used in financing activities	(246,225)
Net decrease in cash and cash equivalents	(50,447)
Cash and cash equivalents at beginning of year	946,654
Cash and cash equivalents at end of year	$ 896,207
Reconciliation of net income to net cash used in operating activities:	
Net income	$ 71,810
Adjustments to reconcile net income to net cash used in operating activities:	
Provision for losses on loans and other property owned	9,515
Decrease in accrued interest receivable	4,600
Increase in other assets and deferred charges	(4,261)
Increase in other liabilities	4,794
Decrease in amount due for financial assistance	(91,292)
Gains from sales of other property owned	1,054
Other, net	(7,106)
Net cash used in operating activities	**$ (10,886)**

The accompanying notes are an integral part of these financial statements.

Farm Credit Bank of Texas and
Texas District Associations

Combined Statement of Changes in Financial Position

(dollar amounts in thousands)

Year ended December 31,

	1987*	1986*
Financial resources were provided by (applied to):		
Operations —		
Net income (loss)	$ 28,336	$ (103,576)
Noncash charges (credits)		
Provision for loan losses	(7,448)	33,797
Provision for losses on other property owned	6,611	3,979
Depreciation and amortization	1,059	(4,716)
Financial resources provided by (applied to) operations	28,558	(70,516)
Cash dividends or patronage refunds paid or declared	(1,576)	299
Net financial resources provided by (applied to) operations	26,982	(70,217)
Financing activities issued (retired)		
Consolidated systemwide notes, net	(278,699)	175,763
Consolidated systemwide and other bonds issued	1,995,460	1,882,629
Consolidated systemwide, bank and other bonds retired	(2,330,992)	(1,706,928)
Notes payable, net	32,068	15,519
Capital stock and participation certificates, net	(19,842)	(35,472)
Allocated surplus	283	(1,709)
Total financial resources provided by (applied to) financing activities	(601,722)	329,802
Other activities — (increase) decrease in nonearning assets and increase (decrease) in liabilities —		
Accrued interest receivable	22,662	26,469
Other property owned	(9,952)	(17,838)
Premises and equipment	(1,555)	(3,433)
Accrued interest payable	(5,264)	(8,924)
Other, net	6,604	103,056
Total financial resources applied to nonearning assets and liabilities	12,495	99,330
Increase (decrease) in financial resources invested in earning assets	$ (562,245)	$ 358,915
Increase (decrease) in earning assets:		
Loans	$ (216,122)	$ (492,178)
Cash and investment securities	(339,829)	843,120
Notes receivable	(6,294)	7,973
	$ (562,245)	$ 358,915

The accompanying notes are an integral part of these financial statements.
*Restated for the merger of the Federal Land Bank and the Federal Intermediate Credit Bank.

FARM CREDIT BANK OF TEXAS
AND TEXAS DISTRICT ASSOCIATIONS

NOTES TO COMBINED FINANCIAL STATEMENTS

(Dollars in thousands, except as noted)

NOTE 1 — ORGANIZATION, MERGER, OPERATIONS AND PRINCIPLES OF COMBINATION

A. Organization: The Farm Credit Bank of Texas (the bank) is one of the banks of the Farm Credit System (the system) which were established by acts of Congress and is currently subject to the provisions of the Farm Credit Act of 1971, as amended (the Farm Credit Act). The most recent significant amendment to the Farm Credit Act occurred on January 6, 1988, when the Agricultural Credit Act of 1987 (the 1987 Act) was signed into law. During 1988, pursuant to the 1987 Act, the banks of the system underwent several structural changes. The Federal Land Banks (FLBs) and Federal Intermediate Credit Banks (FICBs) in 11 of the 12 Farm Credit districts, including the Texas District, merged and formed Farm Credit Banks (FCBs). The FLB of Jackson was placed into receivership by the system's regulator, the Farm Credit Administration (FCA); therefore, the FLB and FICB of Jackson continue to operate as separate entities. The FICB and Production Credit Associations of the Jackson District and the bank have announced their intention to merge. Stockholders of ten of the 12 district Banks for Cooperatives (BCs), including the Texas BC, approved a consolidation of their banks and the Central Bank for Cooperatives (CBC) to form the National Bank for Cooperatives (CoBank) which became effective on January 1, 1989. The two BCs which did not merge are the Springfield BC and the St. Paul BC.

Each FCB is responsible for supervising the activities of the Federal Land Bank Associations (FLBAs), Production Credit Associations (PCAs) and Agricultural Credit Associations (ACAs) within its district (FLBAs, PCAs and ACAs are collectively referred to as associations). No ACAs have been organized in the Texas District as of December 31, 1988. The FCBs make loans to or for the benefit of eligible borrowers/stockholders for qualified agricultural purposes. Funds for the FCBs are raised principally through the sale of consolidated systemwide bonds and notes to the public.

B. Merger of the FLB and FICB: On July 6, 1988, as required by the 1987 Act, the Texas FLB and FICB merged to form the FCB of Texas. The merger has been accounted for on a historical cost basis similar to that in the pooling of interest method of accounting and, accordingly, the accompanying financial statements for all years presented have been restated to combine the accounts and results of operations of the FLB, FICB and the constituent associations as if the merger were in effect for all periods presented. The bank succeeded to all rights and obligations of the merging banks pursuant to merger plans adopted by the boards of directors of the FLB and FICB. Prior to the merger, the accounting practices used by both banks were consistent. The interbank transactions which would require elimination, because of the merger, were minimal.

The existing capital of the FLBAs and the PCAs was converted, based on the FLB's and FICB's relative net worth, into Class B common stock for FLBA stockholders, Class C common stock for PCA stockholders and allocated surplus. The determination of FLB net worth was as of June 30, 1988, adjusted for the October 1, 1988, recording of a $19.9 million receivable for excess stock purchased from the Financial Assistance Corporation, as more fully described in Note 3, "Implementation of the Agricultural Credit Act of 1987." This adjustment was necessary since the original stock purchase by the FLB in March 1988 for $28.3 million had been recorded as an expense. The determination of FICB net worth was as of June 30, 1988. Unallocated surplus has been equalized through a transfer of unallocated surplus by allocation of surplus to associations based on the percentage of each bank's unallocated surplus to its total net worth.

Common stock and allocated surplus was allocated to the district's FLBAs and PCAs pro rata based on each association's ownership in its respective bank's stock as of June 30, 1988.

Other financing institutions (OFIs) which held participation certificates in the FICB have been issued participation certificates of the FCB having an aggregate par value that equals the sum of the par value of the participation certificates held, plus the book value of the FICB legal reserve allocated to such institutions as of June 30, 1988.

Separate net interest income, and net income of the combined FLB and FLBAs and the combined FICB and PCAs prior to the restatement were as follows:

	Six months ended June 30, 1988 (Unaudited)	Year ended December 31, 1987	1986
Net interest income:			
FLB/FLBAs	$ 15,505	$ 34,094	$ 47,152
FICB/PCAs	16,425	35,302	42,174
Combined	$ 31,930	$ 69,396	$ 89,326
Net income (loss):			
FLB/FLBAs	$ 50,137	$ 23,099	$ (93,730)
FICB/PCAs	(5,326)	5,237	(9,846)
Combined	$ 44,811	$ 28,336	$ (103,576)

C. Operations: The Farm Credit Act sets forth the types of authorized lending activity, persons eligible to borrow and financial services which can be offered with respect to the bank and the district's associations.

The bank and/or the associations are authorized to provide or participate with other lenders to provide credit, credit commitments and related services to eligible borrowers. Eligible borrowers with respect to both the bank and PCAs are defined as a) bona fide farmers and ranchers and the producers or harvesters of aquatic products, b) persons furnishing to farmers and ranchers farm-related services directly related to their on-farm operating needs, c) owners of rural homes and d) rural residents. The bank may also lend to any national bank, state bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings institution, credit union, or any association of agricultural producers engaged in the making of loans to farmers and ranchers, and any corporation engaged in the making of loans to producers or harvesters of aquatic products.

The bank and associations also offer credit life insurance, multi-peril crop insurance, financial management services and an investment bond program to their borrowers as additional services.

The bank is chartered to service the state of Texas. During 1988, the bank and the BC were separate legal entities which shared joint management and employees. Common costs of the two banks were allocated on bases which approximated actual costs incurred by each bank. As discussed above, subsequent to December 31, 1988, the Texas District BC merged to form the CoBank.

The district's 44 FLBAs, 22 PCAs and certain OFIs jointly own the bank. The FLBAs act as agents in originating and servicing long-term real estate mortgage loans made to FLBA members while the PCAs and OFIs borrow from the bank and in turn originate and service short-term and intermediate-term loans to their members.

The bank, in conjunction with other banks in the Farm Credit System, jointly own several service organizations which were created to provide a variety of services for the Farm Credit System. The bank has ownership interests in the following service organizations:

- Federal Farm Credit Banks Funding Corporation (Funding Corporation) — provides for the issuance, marketing and handling of systemwide debt securities using a network of investment dealers and dealer banks.
- Farm Credit Corporation of America — serves as a facility for the development of operating policies, standards and programs for consideration of adoption by system institutions.
- FCS Building Association — leases premises and equipment to the system's regulator, FCA.
- Farm Credit Leasing Services Corporation — provides a variety of leasing services for agricultural-related equipment and facilities.

The Farm Credit System Assistance Board (Assistance Board) and the Farm Credit System Financial Assistance Corporation (FAC) were established by the 1987 Act. The purpose of the Assistance Board is to carry out a program to provide assistance to and protect certain capital of borrowers of system institutions, and to assist in restoring troubled system institutions to economic viability. The Assistance Board's charter will terminate on December 31, 1992. The FAC was established as more fully described in Note 3, "Implementation of the Agricultural Credit Act of 1987," to provide capital, as directed by the Assistance Board, to institutions of the system experiencing financial difficulty.

FCA is delegated authority by Congress to regulate the bank and associations. The activities of the bank and associations are examined by FCA and certain actions by these entities are subject to FCA's prior approval.

D. Principles of Combination: The accompanying combined financial statements include the accounts of the bank, the district's 22 PCAs and 44 FLBAs and reflect the investments in and allocated earnings of the service organizations in which the bank has partial ownership interests. All significant transactions and balances between the bank and associations have been eliminated in combination.

NOTE 2 — SUMMARY OF ACCOUNTING POLICIES

The accounting and reporting policies of the combined bank and associations conform to generally accepted accounting principles (GAAP) and prevailing practices within the banking industry for 1987 and 1986; however, for 1988 the bank has not recorded its estimated liability and related reduction in surplus, pertaining to certain obligations the bank will ultimately be required to pay as set forth by the 1987 Act. The 1987 Act required the FAC to assume certain payables and allowed system banks to reverse the previously accrued liabilities recorded as a result of activation of the system's Capital Preservation Agreements. The FAC will fund payment of such accruals by the issuance of 15-year U.S. Treasury-guaranteed debt. Upon maturity, the system banks are responsible for payment of an amount equal to the principal of such debt, which is to be allocated on the basis of each bank's average accruing loan volume during the 15-year period in which debt is outstanding, as a percentage of combined average accruing loan volume during the same period for all system banks. Although generally accepted accounting principles would require recognition of the bank's liability in the financial statements, the 1987 Act states that, for all financial reporting purposes, this obligation should not be considered a liability of any system bank until the maturity of such debt. The bank's unrecorded liability at December 31, 1988, is estimated to be $4.0 million which represents the present value of such liability, discounted at 9.5 percent and is payable to the FAC in 2003 in the amount of $15.7 million.

A. Loans: The bank makes loans secured by first mortgages on real estate to eligible borrowers through FLBAs in the district. Long-term mortgage loan amortization plans range from 5 to 40 years. Substantially all PCA loans are made for agricultural production or operating purchases and have maturities of 10 years or less. In addition, loans can be made by the bank to OFIs which, in turn, make agricultural loans to their borrowers for the purpose of financing seasonal and intermediate-term capital requirements.

Loans are carried at their principal amount outstanding less unearned income. Interest on loans is accrued and credited to interest income based on the daily principal amount outstanding. Loans are generally placed in nonaccrual status when principal or interest is delinquent for 90 days (unless well secured and in the process of collection) or circumstances indicate that collection of principal and/or interest is in doubt. When a loan is placed in nonaccrual status, accrued interest deemed uncollectible is either reversed (if current year interest) or charged against the allowance for loan losses (if prior year interest). Collections on loans in nonaccrual status are applied first to principal and then to interest after all principal has been collected, unless the loan is current and collection of principal and interest is not in doubt. Nonaccrual loans may be returned to accrual status when principal and interest are current and collection of future payments is no longer in doubt.

Statement of Financial Accounting Standards No. 91, "Accounting for Nonrefundable Fees and Costs Associated with Originating and Acquiring Loans and Initial Direct Costs of Leases" (SFAS No. 91), became effective for loan originations beginning January 1, 1988. SFAS No. 91 requires loan origination fees and direct loan origination costs, if material, to be capitalized and the net fee or cost to be amortized over the life of the related loan as an adjustment to yield. SFAS No. 91 was not applied because the effects were not material to the combined financial position or results of operations.

B. Allowance for Loan Losses: The allowance for loan losses is established by a charge to expense in an amount sufficient to maintain the balance at a level considered adequate by management to provide for estimated losses inherent in the loan portfolio. The allowance is based on a periodic evaluation of the loan portfolio in which numerous factors are considered, including economic conditions, loan portfolio composition and prior loan loss experience. Loan principal and interest are charged against the allowance for loan losses when management believes collection is unlikely.

The bank and the FLBAs have entered into an agreement under which each FLBA agrees to indemnify the bank for 50 percent of losses incurred on its members' loans.

C. Investment Securities: Investment portfolios are maintained primarily for liquidity purposes. Investment securities are stated at cost, adjusted for amortization of premiums and accretion of discounts. Premiums and discounts are amortized or accreted using the straight-line method (which approximates the interest method) over the terms of the respective issues. Gains or losses on sales of securities are recognized currently.

D. Adoption of SFAS No. 95: In 1988, the bank and associations adopted Statement of Financial Accounting Standards No. 95, "Statement of Cash Flows" (SFAS No. 95). SFAS No. 95 supersedes Accounting Principles Board Opinion No. 19, "Reporting Changes in Financial Position." SFAS No. 95 established standards for reporting information about cash receipts and cash payments. As permitted by SFAS No. 95, the accompanying financial statements include a statement of cash flows for the year ended December 31, 1988, and a statement of changes in financial position for the years ended December 31, 1987 and 1986.

For purposes of reporting cash flows, cash and cash equivalents include cash on hand, federal funds, and other short-term and highly liquid investment securities. For the year ended December 31, 1988, the bank and associations paid interest and income taxes of $299.6 million and $2.0 million, respectively.

E. Other Property Owned: Other property owned, consisting of real and personal property acquired through foreclosure or deed in lieu of foreclosure, is carried at the lower of cost or net realizable value. When the property is acquired, any excess of the loan balance over the property's net realizable value is charged to the allowance for loan losses. Subsequent permanent declines in value, if any, are charged to losses on other property owned with a corresponding write-down of the asset or an addition to an allowance for losses on other property owned. The allowance for losses on other property owned was $2,522, $3,428 and $5,005 at December 31, 1988, 1987 and 1986, respectively.

F. Premises and Equipment: Premises and equipment are carried at cost less accumulated depreciation. Depreciation is provided on the straight-line method over the estimated useful lives of 40 years for buildings and improvements, 3 to 10 years for furniture, equipment and certain leasehold improvements, and 3 years for automobiles. Gains and losses on dispositions are reflected currently. Maintenance and repairs are charged to operating expense and improvements are capitalized.

G. Other Assets and Deferred Charges: Direct expenses incurred in issuing debt are deferred and amortized using the straight-line method, which approximates the interest method, over the term of related indebtedness.

In connection with past foreclosure and sale proceedings, the bank has retained certain mineral interests and equity positions in land from which it receives revenues from lease bonuses, rentals, and leasing and production royalties. These intangible assets are recorded at nominal or no value in the Combined Statement of Condition. Income received by the bank from mineral and royalty holdings in 1988, 1987 and 1986, was $1,828, $1,997 and $2,311, respectively, and is included in other income. The Farm Credit Act now requires that mineral rights acquired through foreclosure be sold to the buyer of the surface rights in the land.

H. Retirement and Thrift Plans: The employees of the bank and associations participate in the Retirement Plan of the district. The bank and associations use the "Projected Unit Credit" actuarial method for financial reporting purposes and the "Entry-Age Normal Cost" method for funding purposes.

The employees of the bank and associations are eligible to participate in the Thrift/Deferred Compensation Plan (Thrift Plan) of the district; a certain percentage of employee contributions are matched by the bank and associations. Thrift Plan costs are funded as accrued.

I. Income Taxes: The bank and the FLBAs are exempt from federal and other income taxes as provided in the Farm Credit Act. The PCAs are subject to federal income taxes. Deferred income taxes are provided on differences between the recognition of certain revenues and expenses for financial and income tax reporting purposes, primarily the provision for losses on loans.

Deferred income taxes are not provided by the PCAs on patronage refunds received from the bank because such refunds, distributed in the form of stock and allocated surplus, are subject to income tax only upon conversion to cash. Future conversions are expected as a result of redemptions; however, the amount cannot be determined at this time.

In December 1987, the Financial Accounting Standards Board adopted Statement of Financial Accounting Standards No. 96, "Accounting For Income Taxes" (SFAS No. 96), which requires income taxes to be accounted for under the liability method, rather than in accordance with the deferred method, as previously required by Accounting Principles Board Opinion No. 11, "Accounting for Income Taxes" (APB No. 11). SFAS No. 96 is required to be adopted for all tax years beginning after December 15, 1989. However, earlier adoption is permitted. Financial statements for years prior to the effective date may be restated to conform to the provisions of the statement. Substantially all PCAs have elected not to adopt the statement for 1988 and accordingly, income taxes have been accounted for in accordance with APB No. 11 in these financial statements. This new accounting standard is not expected to have a material impact on the combined financial condition of the bank and associations.

Certain PCAs operate as cooperatives which qualify for tax treatment under Subchapter T of the Internal Revenue Code. These PCAs can exclude from taxable income amounts distributed as qualified patronage refunds.

Each PCA is a separate taxable entity, and as such, losses incurred by one PCA cannot be used to affect income in other PCAs. As a result, there may be provision expense for income taxes even though, in total, the PCAs may have incurred a loss.

NOTE 3 — IMPLEMENTATION OF THE AGRICULTURAL CREDIT ACT OF 1987

The 1987 Act, enacted on January 6, 1988, contains provisions affecting the bank, associations and their borrowers and includes provisions for providing financial assistance to system institutions experiencing severe financial stress. Following enactment, factors existed which made it uncertain whether the 1987 Act would be implemented on a timely basis in accordance with its provisions. However, during 1988, substantial progress was made which included, but was not limited to, (1) the Assistance Board authorized and provided, through the FAC, financial assistance to several financially stressed system institutions, (2) significant organizational and operational changes mandated by the 1987 Act were completed or were undertaken and are in process and (3) other required provisions of the 1987 Act were met on a timely basis. As more fully described in Note 4, "Liquidation of the Federal Land Bank of Jackson and Related Uncertainties," however, additional financial assistance will be required to permit the FLB of Jackson in Receivership to continue to retire its stock and/or to otherwise satisfy its obligations.

The following paragraphs summarize actions taken to implement the provisions of the 1987 Act.

Financial Assistance Mechanisms

The FAC, upon the approval of the Assistance Board, is authorized to issue up to $4 billion of 15-year U.S. Treasury-guaranteed debt for purposes specified in the 1987 Act. The FAC made two offerings during 1988 totaling $690 million, due in 2003. The proceeds of the offerings were primarily used to pay a portion of third quarter 1986 Capital Preservation accruals as described below (approximately $258 million), to fund financial assistance to certain system banks (approximately $371 million), to retire stock of certain liquidating system institutions (approximately $21 million) and to pay the operating expenses of the Assistance Board and certain debt issuance costs of the FAC (approximately $7 million). At December 31, 1988, approximately $33 million of the balance of the proceeds of such debt offering was available for uses authorized under the 1987 Act.

Through December 31, 1988, the Assistance Board has provided assistance to system institutions which was comprised of the following:

- $40 million for the FLB of Jackson to provide collateral for accessing the debt market and an additional $5 million for the purpose of retiring eligible borrower stock at par. As previously described, the FLB of Jackson is in receivership and is not in compliance with the collateral requirements for continued participation in systemwide debt issuances.
- $90 million for the FCB of Louisville, and $107.2 million for the FCB of Omaha, principally to facilitate the restructuring of a portion of their high-cost debt.
- $133.4 million for the FCB of St. Paul to facilitate the restructuring of a portion of its high-cost debt, to strengthen its capital, and for other purposes.
- $16.1 million for six PCAs in liquidation in the Spokane and Omaha districts in order to permit the retirement of previously frozen borrower stock at par value in accordance with the 1987 Act.

On January 11, 1988, the FAC assumed the accounts payable of certain banks that accrued financial assistance to other system banks during the third quarter of 1986 under terms of the Capital Preservation Agreements. As a result of the FAC assuming these accounts payable, the bank reversed an account payable of $72.4 million in January 1988, relating to amounts previously expensed in 1986 and thus recorded income in such amount in the first quarter of 1988.

Pursuant to the 1987 Act and the Agricultural Credit Technical Corrections Act of 1988, the system banks will be charged amounts equal to the principal and interest on FAC debt utilized to fund payment of capital preservation accruals, and both system banks and associations will be charged additional amounts equal to the interest and principal payments on debt issued for certain other purposes. The bank and the associations were charged $1.7 million and recorded a liability of $1.1 million which represents the present value of the obligation due the FAC for an amount equal to its estimated liability for funding certain principal payments due in July and November 2003. These amounts do not include an obligation to the FAC representing certain third quarter 1986 Capital Preservation accruals as more fully described in Note 2, "Summary of Accounting Policies."

In March 1988, the FAC collected from certain banks and associations approximately $177 million, including $36.9 million from the bank and its associations, for the mandatory purchase of FAC stock, which stock has no provision for redemption or retirement. The stock purchase was in an amount equal to the excess of unallocated retained earnings of each system institution over a specified percentage of total assets. The proceeds of the stock purchase constitute a Trust Fund to be drawn upon in the event of a default by a system institution that is primarily responsible for funding the repayment of its allocated portion of principal or interest on debt securities issued by the FAC.

On October 1, 1988, the President signed a bill which revises the stock purchase requirements imposed by the 1987 Act. The bill provides that effective October 1, 1989, mandatory purchases of FAC stock in excess of stock purchases required in connection with the issuance of FAC debt, as defined in the new law, are to be returned to the paying system institutions. Subsequent to that date, such system institutions will be required to purchase additional stock ratably as the FAC issues additional debt. As of December 31, 1988, the bank and its associations have a $25.9 million receivable from the FAC related to this excess stock purchase.

Prior to enactment of the aforementioned law, litigation had been initiated by 21 PCAs in three districts against the FAC and FCA in connection with the mandatory stock purchase. This litigation is currently in the discovery stage and it cannot be predicted at present whether enactment of the law will have an impact on such litigation.

System Organizational Restructuring

The 1987 Act contains certain provisions relating to the organizational structure and operations of system institutions.

In early July 1988, the FLB and FICB in each district, except Jackson, merged to form a FCB. Not later than six months after formation of the FCB in each such district, each FLBA and PCA in that district that share substantially the same geographical territory were required to submit a plan of merger to their voting stockholders. Upon analyzing each FLBA and PCA territory, the bank determined that no associations in the Texas District had common territories as defined in regulations issued by FCA.

In May 1988, a special committee composed of one representative from each district who has been elected to serve on the FCB board of directors and the entire board of directors of the Assistance Board was formed for the purpose of developing a proposal to consolidate the FCBs into not less than six financially viable FCBs.

The bank invested $796 in the Series B units offered by the Federal Agricultural Mortgage Corporation (Farmer Mac) in December 1988. Farmer Mac was established to promote a secondary market for agricultural mortgage loans that meet specified underwriting standards.

The 1987 Act established the Farm Credit System Insurance Corporation (Insurance Corporation) primarily to ensure the timely payment of principal and interest on consolidated or systemwide notes, bonds, debentures and other obligations issued on behalf of one or more system banks. The primary source of funds for the Insurance Corporation will be the assessment on banks of premiums, based upon loan volumes; payment of insurance premium assessments commences in January 1990. Beginning in January 1993, the Insurance Corporation is to expend amounts available to the extent necessary to ensure the timely payment of interest and principal on insured obligations. The Insurance Corporation is to be managed by a board of directors consisting of the FCA board.

District Organizational Restructuring

On December 21, 1988, the FCA approved the December 7, 1988, Loan Sale Agreement between the bank and the Federal Land Bank of Jackson in Receivership (the seller) and amendments to the existing charter of the bank to incorporate the permanent long-term loan servicing rights for the states of Alabama, Mississippi and Louisiana (FCA Charter) upon the date of settlement. On February 10, 1989 the events and transactions necessary for settlement were completed resulting in the acquisition by the bank of the business operations of the FLB of Jackson by purchase of approximately 17,000 loans from the seller and receipt of the FCA Charter, which provides for the permanent long-term servicing rights for the states of Alabama, Louisiana and Mississippi, for $940.4 million. Acquisition expenses of $2.2 million were recorded in 1988. The bank's first 1989 Quarterly Financial Statements will report the acquisition of these loans.

The Loan Sale Agreement provides for the repurchase of certain loans by the seller without recourse, at the request ("put") of the bank for a 90-day period beginning February 13, 1989. The bank can request loan "puts" on 85.2 percent of the purchased loans but the total amount of the "puts" cannot exceed 15 percent of the aggregate amount paid the seller with a maximum of 5 percent in either of the first or second 30-day periods of the total 90 days. Loans will be repurchased by the seller at 100 percent of the repurchase price during the first 30 days, 95 percent during the second 30 days and 90 percent during the third 30 days of the 90 day "put" period. Certain loans may be required to be repurchased by the seller without limitation or penalty. At this time, management of the bank cannot determine if the amount of loans to be returned during the "put" period will be material.

Due to the liquidation of the FLB of Jackson as discussed in Note 4, "Liquidation of the Federal Land Bank of Jackson and Related Uncertainties," the FICB of Jackson has initiated discussion on realignment by merger with the bank. Discussions on affiliation and eventual merger of the FICB of Jackson with the FCB of Texas have been held resulting in boards of directors for the bank, the FICB of Jackson and the Jackson PCAs signing a Memorandum of Understanding in October 1988, which provides for the eventual implementation of a Management Agreement, which will provide for the management of the FICB of Jackson by the bank; a Participation Agreement, which provides for the purchase of substantially all of the direct notes of the PCAs borrowing from the FICB of Jackson by the bank; and an agreement, which will provide for the merger of the Jackson FICB with and into the bank.

In May 1988 three PCAs in New Mexico, currently affiliated with the Farm Credit Bank of Wichita, filed petitions with FCA, the Assistance Board and the bank for reassignment to the Texas District as provided for in the 1987 Act. The request for reassignment was approved by the bank and has received preliminary approval of the Assistance Board. A disclosure document to obtain association stockholder approval has been submitted to the Assistance Board for approval and to FCA for review and approval of the reassignment.

On September 30, 1988, the bank entered into a loan settlement agreement with Winter Garden PCA. This agreement provided for the assumption by the bank of all assets and liabilities of the PCA in full settlement of the PCA's obligation to the bank. The settlement agreement also provided for the retirement of all stockholder capital investment in the PCA at full par or face value. Following the transfer of assets to the bank, substantially all of the acceptable loans and the office buildings of the PCA were sold to Coastal Bend PCA as a result of competitive bidding among several PCAs with territory adjoining Winter Garden PCA. The bank recorded charge-offs of $2.7 million on this PCA loan.

On January 6, 1989 FCA appointed a receiver for the Richmond Production Credit Association. The FCA action was the result of the PCA's board of directors' request of November 8, 1988, for FCA to voluntarily liquidate the association. Credit services to the territory are being provided on a temporary basis by a neighboring PCA. The bank currently expects to collect its recorded receivable from the FCA appointed receiver.

In early January 1989, five PCAs and a group of stockholders seeking reconsideration of a previous merger in Oklahoma, currently affiliated with the Farm Credit Bank of Wichita, filed stockholder petitions with FCA and the bank seeking reassignment to the Texas District as provided for in the 1987 Act. The bank has initiated a review of the financial condition of these associations prior to the bank's consideration of the reassignment. If approved by the bank, the approval of the Assistance Board and FCA would be required before the association stockholders could vote on reassignment to the Texas District.

In February 1989 the United States District Court for the Northern District of Texas ruled that FCA acted outside its then-existing statutory authority (pre-1987 Act) to regulate and examine the institutions of the Farm Credit System in denying its consent to the Plan of Reorganization of Amarillo PCA. The Amarillo Plan of Reorganization, which was approved by its stockholders on March 15, 1986, provides that the Amarillo PCA would withdraw from the Farm Credit System by reorganizing into a state-chartered mutual loan association. If this court's finding is not overturned (no appeal has been filed), Amarillo PCA may withdraw from the system without the payment of its excess capital (amount by which the total capital of the PCA exceeds 6 percent of its assets) to the Farm Credit Assistance Fund, as provided for in the 1987 Act, upon termination of status as a system institution.

Eligible Borrower Stock

Certain borrower capital is provided retirement rights under the 1987 Act which require the bank and/or associations, when retiring borrower capital, to retire such capital at par value. The rights are more fully described in Note 5, "Capital."

Farm Credit Administration Regulations

FCA has published several final regulations intended to implement provisions of the 1987 Act. The regulations discussed below may have a significant impact upon the financial conditions and/or operations of the bank and associations:

- The final regulations governing implementation of the borrowers' rights provisions of the 1987 Act have become effective. These regulations include procedures for restructuring and servicing loans, for disclosing loan information to borrowers, and for implementing borrowers' first refusal rights with respect to the sale or lease of certain other property owned.
- Under new regulations governing minimum permanent capital adequacy and other capitalization issues, expected to become effective in the first quarter of 1989 when the period for Congressional review of the regulations expires, the bank and associations are required to achieve minimum permanent capital of 7 percent of risk-adjusted assets and off-balance sheet commitments by January 1, 1993. The minimum capital requirements are phased in through a series of interim permanent capital standards that are determined by reference to the bank's and associations' permanent capital ratios on June 30, 1988. The difference between the June 30, 1988, ratio and 7 percent is phased in ratably beginning in 1990. The bank and associations are prohibited from reducing permanent capital by retiring stock or making certain distributions to stockholders unless these interim or final capital standards are met. If the bank or the associations fail to satisfy the interim standards through 1992 or the final 7 percent standard effective January 1, 1993, they may nevertheless be eligible for regulatory forbearance if they demonstrate the requisite progress towards meeting the new requirement. Regulatory forbearance would preclude FCA enforcement action solely as a result of the bank's and associations' failure to meet the minimum permanent capital adequacy standards, but would not remove the prohibition against retiring stock or making certain other distributions to stockholders. The regulation also provides for the elimination of double counting of capital between the bank and its associations for purposes of determining the permanent capital ratio of each institution.

The bank's permanent capital ratios, as determined in accordance with FCA regulations, at June 30 and December 31, 1988, were 7.7 percent and 9.1 percent, respectively.

- Under new regulations, with respect to the bank's and associations' adoption of new capitalization bylaws, equities will be required to qualify as permanent capital of the bank and associations. The regulations will provide minimum guidelines for the issuance and retirement of certain such equities. Also, the regulations will require the bank and associations to submit to their stockholders for approval proposed capitalization bylaws. The regulations are expected to become effective in the first quarter of 1989 when the Congressional review period expires.

NOTE 4 — LIQUIDATION OF THE FEDERAL LAND BANK OF JACKSON AND RELATED UNCERTAINTIES

On May 20, 1988, FCA, at the request of the Assistance Board, appointed a receiver to liquidate the Federal Land Bank of Jackson and its related Federal Land Bank Associations (collectively, the FLB of Jackson). FCA's order to the receiver provided that the outstanding equities of the FLB of Jackson were to be retired at par value, as required by the Farm Credit Act. The bank is jointly and severally liable on all systemwide obligations of the FLB of Jackson.

Excluding eligible borrower and other capital of approximately $134 million, the FLB of Jackson currently has an estimated net deficit of $385 million. Further, approximately $140 million of net additional interest will accrue on the FLB of Jackson's systemwide obligations which mature between 1990 and 1992. The FLB of Jackson is currently unable to directly access the debt markets to satisfy its maturing obligations.

The Farm Credit Act contains mechanisms which provide for the repayment of systemwide obligations for which the FLB of Jackson is primarily liable, but unable to repay. These mechanisms include the authority of the Assistance Board to authorize the FAC to issue U.S. Treasury guaranteed debt and to purchase preferred stock directly in the FLB of Jackson or in other system entities to facilitate transactions with the FLB of Jackson. These transactions may also require the consent of FCA. The Farm Credit Act also provides that FCA may directly call upon other system banks for the repayment of systemwide obligations which the FLB of Jackson is unable to pay.

During 1988, the Assistance Board authorized and facilitated certain transactions which enabled the FLB of Jackson to meet its debt service requirements. These transactions included the purchase of preferred stock of $40 million from the FLB of Jackson by the FAC and the exchange of the FLB of Jackson's maturing debt obligations with longer term systemwide debt of other system entities. The Assistance Board also authorized direct financial assistance to the entities with which the FLB of Jackson exchanged its maturing debt. FCA did not object to these transactions.

Subsequent to December 31, 1988, the Assistance Board committed to authorize the FAC to issue U.S. Treasury guaranteed debt to fund the retirement of $89 million of eligible borrower capital outstanding at the FLB of Jackson. As more fully described in Note 3, "Implementation of the Agricultural Credit Act of 1987," the bank and district PCAs will record the present value of its proportionate share of this liability upon its ultimate funding by the FAC. The estimated present value of this liability is $1.4 million and the amount payable upon maturity is $5.4 million.

The Assistance Board has not committed presently to authorize additional financial assistance directly or indirectly to the FLB of Jackson which would permit the FLB of Jackson to satisfy its systemwide obligations as they mature. It also cannot be predicted whether FCA would continue to consent to further debt exchange transactions, if any, between the FLB of Jackson and other system entities.

As a result of matters discussed in the preceding paragraph, it cannot be predicted whether FCA may call on other system banks in 1990 or thereafter to satisfy any of the FLB of Jackson's systemwide obligations. A call by FCA on the bank would be based upon the bank's excess collateral position at the time of the call. After the financial assistance provided as described above, management currently estimates that the additional liability the bank may be required to assume could range up to $36.4 million although it could be substantially less than this amount. No provision for liability, if any, which the bank might be required to assume in connection with the settlement of the FLB of Jackson's systemwide obligations has been made in the accompanying financial statements.

NOTE 5 — CAPITAL

In accordance with the Farm Credit Act, each borrower is required to invest in capital stock of the respective association as a condition of borrowing. Through 1988, an initial investment, capital stock (in the case of mortgage or agricultural loans) or participation certificates (in the case of rural residence or farm-related business loans) of 5 percent and not in excess of 10 percent of the loan was required for FLBA and PCA borrowers, respectively. Each owner or joint owner of voting capital is entitled to a single vote, regardless of the number of shares held in the respective association, while class A stock and participation certificates provide no voting rights to their owners. The borrower acquires ownership of the capital stock at the time the loan is made but usually does not make a cash investment for the capital stock; the aggregate par value of the stock is added to the principal amount of the related loan obligation. The bank and associations have a first lien on the stock or participation certificates owned by borrowers.

In accordance with the 1987 Act and in the ordinary course of business (usually loan payoff) an association will retire borrower capital stock, participation certificates and allocated equities held by any person other than any system institution (eligible borrower stock) if issued or allocated prior to October 5, 1988, at par or stated value regardless of its book value. If an association is unable to retire eligible borrower stock at par or stated value due to the liquidation of the institution, amounts required for these retirements would be provided by the FAC, or authorized by the Assistance Board, subject to the limitations on the amount of debt securities which the FAC can issue in accordance with the 1987 Act. After 1992, amounts required to retire eligible borrower stock may be obtained from the Farm Credit System Insurance Fund, which will be funded by system institutions. Of the $198,122 of combined capital stock, $13,413 of combined participation certificates and $1,284 of allocated surplus at December 31, 1988, $189,905, $13,394 and $1,284, respectively, is considered eligible borrower stock. Eligible borrower stock is only retired when applied against the loan due to loan payoff, on loan repayments when requested by the borrower or paid in cash to the holder. As described below, the retirement of stock issued by associations as permanent capital must comply with regulations of FCA on minimum permanent capital adequacy requirements.

The 1987 Act requires that every Farm Credit institution adopt bylaws developed by its board of directors and approved by a majority of the stockholders present and voting, or voting by written proxy, at a duly authorized stockholder meeting, that will provide for the permanent capitalization of the institution and enable it to meet the permanent capital adequacy standards established by FCA regulations. In addition, the 1987 Act and FCA regulations require the following key provisions be contained in the bylaws regarding stock; that as a condition for obtaining a loan the percentage or dollar amount of equity investment (which may be expressed as a range within which the board of directors may from time to time determine the requirement), which amount may be more than, but shall be not less than, 2 percent of the loan amount or $1,000, whichever is less; shall require the holder of voting stock issued before the adoption of bylaws by stockholders to exchange a portion of such stock for new voting stock; and shall permit the retirement of stock at the discretion of the institution only if the institution meets the capital adequacy standards established by FCA regulations.

FCA published final capital adequacy regulations in October 1988. These regulations are expected to become effective in the first quarter of 1989 when the period for Congressional review expires, and will require banks and associations to achieve permanent capital of 7 percent of risk-adjusted assets by january 1, 1993. Refer to "Farm Credit Administration Regulations" in Note 3, "Implementation of the Agricultural Credit Act of 1987."

An FCA regulation precludes the bank from retiring capital stock or participation certificates when it has either a negative total capital position, determined in accordance with generally accepted accounting principles, or a collateral deficiency for debt purposes. Associations, as well, are precluded from retiring capital stock when they have a negative total capital position.

FCA has issued a directive which prohibits the banks and associations from taking any action outside the normal course of business that has the effect of dissipating the institution's existing capital resources or otherwise diminishing its capacity to provide financial assistance to other institutions unless such action is approved by FCA. The directive places restrictions on the payments of dividends or patronage refunds and implements other restrictions. Upon the effective date of the capital adequacy regulations, this directive would be rescinded.

The bank is a party to two interlocking, but separate, loss sharing agreements with each of the Farm Credit System Banks. The agreements were used to prevent impairment of the par value of capital stock and participation certificates of the parties through the sharing of losses, subject to certain conditions and limitations. The contribution required of each bank was limited to an amount not to exceed that which would cause its own impairment. The bank recorded a charge of approximately $113.5 million in connection with activation of the agreements in 1986 by the FLB of Louisville, the FLB of Jackson, the FLB of St. Louis, the FLB of St. Paul, the FLB of Omaha and the FLB of Wichita for $930.7 million. The payable relating to capital preservation activation at December 31, 1987, of $80.2 million, was reduced to $4.6 million at December 31, 1988, as a result of the reversal of $72.4 million due to assumption of the liability by the FAC in accordance with the 1987 Act, the reversal of $2.5 million as a result of a payment settlement agreement between receiving banks and the assessed banks, and the payment of $.7 million to receiving banks.

Provided below is a description of each class of bank and association equities outstanding prior to the adoption of new bylaws on capitalization as discussed above.

FLBAs

FLBAs are authorized to issue voting stock and participation certificates as a condition of a borrower obtaining a loan, as discussed above, in unlimited amounts. Participation certificates do not have voting rights. Each share of voting stock and unit of participation certificates shall have a par value or face value of $5 (five dollars). At December 31, 1988, the aggregate par value of voting shares outstanding was $119,909 (23,981,800 shares) and the aggregate unit value of participation certificates outstanding was $7,544 (1,508,800 units). The associations shall purchase a similar amount of class B (voting) stock and participation certificates in the bank.

Voting stock or participation certificates, other than eligible borrower stock, shall be retired and paid at book value, not to exceed par or face value as determined by the association, upon full repayment of the loan. If the loan is in default, voting stock and participation certificates may be cancelled for application on the loan.

Dividends may be declared out of current earnings or earned surplus and shall be noncumulative. The rate of dividends may be different between voting stock and participation certificates on the basis of the comperative contributions of the holders to the capital or earnings of the bank, but otherwise dividends shall be without preference.

Any losses which result in any impairment of the associations' voting stock or participation certificates shall be borne ratably by each share or unit thereof outstanding as of the date such losses are determined. Upon liquidation of any association, any assets not distributed to satisfy obligations of the association will be distributed ratably to voting stock and participation certificates holders.

The FLBAs have executed a reciprocal capital preservation agreement with the bank, as part of a loss sharing plan involving identical agreements between each FLBA in this district and the bank. Under this plan, the losses of any association that would impair that association's capital stock and participation certificates would be shared by the bank. Any losses of the bank that would impair the bank's capital stock and participation certificates would be shared among the associations. The FLB and FLBAs have not been called upon for contributions under this plan.

PCAs

As discussed above PCAs are authorized to issue class B stock and participation certificates, as a condition of the borrower obtaining a loan, in unlimited amounts. Class B stock has voting rights, while participation certificates do not. Each share of class B stock and unit of participation certificates shall have a par value or face value of $5 (five dollars). At December 31, 1988, the aggregate par value of class B stock was $77,186 (15,437,200 shares) and the aggregate unit value of participation certificates outstanding was $1,905 (381,000 units). Class B stock and participation certificates are generally eligible to be retired upon payoff of loan amounts. Holders of class B stock and participation certificates are eligible for patronage refunds when declared by the associations' boards of directors.

As of December 31, 1988, PCAs had outstanding class A stock in the amount of $1,027 (205,400 shares). Class A stock has been generally issued due to the requirement that when a class B stockholder has not had a loan outstanding for two years his class B stock shall be converted into class A stock. Class A stock does not have voting rights and has a par value of $5 (five dollars). Class A stock is generally eligible to be retired upon request of the holder.

As of December 31, 1988, PCAs had outstanding class D stock in the amount of $5,994 (1,198,800 shares), with a par value of $5 (five dollars) per share. Class D stock was purchased by the bank as a means of providing financial assistance to PCAs. Class D stock does not have voting rights. Of the class D stock outstanding $250 is to be retired in January 1989, $250 in January 1990, and $20 in January of 1991, with the remainder of the class D stock retirable at the discretion of the associations' boards of directors. These rules apply unless the associations default on the terms and conditions of the General Financing Agreement with the bank, cease to be a system institution, or become affiliated with a bank in another district in which event the stock is subject to retirement in favor of the holder. These investment balances and transactions are eliminated in combination.

Dividends may be paid on class A stock alone or on all classes of stock and participation certificates except class D stock which is not eligible to receive dividends. The rate of dividend paid on class A stock in any fiscal year may not be less than the rate of dividend paid on class B stock or participation certificates, and the rate of dividends on class B stock may not be less than the rate paid on participation certificates. No dividends may be paid on class B stock and participation certificates when the association has determined to distribute earnings on a patronage basis. Dividends generally cannot exceed 8 percent per annum of capital stock (except D stock) of the association. Class A stockholders are entitled to a dividend established by the board prior to the distribution of a patronage refund.

When declared by the board, patronage refunds are limited to the extent of net earnings for the fiscal year less an A stock dividend and applicable income taxes. Patronage distributions are generally in the form of allocated surplus and cash. At least 20 percent of the total patronage refund is paid in cash. Individual patronage distributions are determined on the proportion of interest earned by loans to each borrower, who holds class B stock or participation certificates, to the total interest earned by loans to each borrower, who holds class B stock or participation certificates, to the total interest earned by the association on all such loans outstanding during the fiscal year. In the case of liquidation of a PCA, equities will be retired in the following order, after the payment of all liabilities; class A stock not to exceed par value, ratably to class B stock and participation certificates not to exceed par or unit value, to holders of allocated surplus not to exceed face value, class D stock not to exceed par value, with any remaining assets distributed to holders of common stock and participation certificates ratably based on the number of shares of each class outstanding immediately prior to the liquidation distribution. There is an intradistrict loss sharing agreement between 21 of the 22 PCAs in the district, which was suspended from further activation until January 6, 1993, by the bank board of directors. The 1987 Act provides alternative forms of intrasystem assistance to troubled institutions. See Note 3, "Implementation of the Agricultural Credit Act of 1987."

Patronage allocations and refunds received from the bank are excluded from patronage allocations to association borrowers. Amounts not distributed are retained as unallocated surplus.

FCA has promulgated a regulation that empowers it to direct a transfer of funds or equities by one or more banks of the system to another bank of the system under specified circumstances. The bank has not been called upon to initiate any transfers and is not aware of any proposed action under this regulation.

FCB

Capital stock and allocated surplus — Associations are required to invest in the capital stock of the FCB. In addition, the FCB has allocated, but not distributed, a portion of its surplus to the associations. These intercompany balances and transactions are eliminated in combination.

Other equity — At the inception of each OFI loan, the bank requires OFIs to make cash purchases of participation certificates in the bank. In addition, OFIs receive participation certificates and allocated surplus from the bank's distribution of net income on a percentage basis. The bank has a first lien on these equities for the repayment of any indebtedness to the bank. At December 31, 1988, the bank had 939,232 units of participation certificates outstanding at a face value of $5 (five dollars) per unit.

DISTRICT CAPITAL ADEQUACY PLANS

Association Capital Plans

The associations of the district plan to obtain stockholder approval of new capitalization bylaws in compliance with the 1987 Act and FCA regulations during the first five months of 1989. Associations generally intend to establish stock levels as a condition of obtaining a loan at the same levels as were required in the past and to convert all stock currently issued and outstanding to permanent capital in order to meet capital adequacy standards established by FCA.

Several PCAs are considering a reduction in the level of stock required as a condition of a loan; however, in all such cases these associations would also meet the FCA capital adequacy standard upon conversion to the proposed level of stock as permanent capital.

To meet minimum capital adequacy standards established by FCA, several FLBAs will need to rely on the future cash redemption of allocated surplus held in the bank, previously distributed by the bank, since all stock received from members is required to be invested by the FLBA into the bank as permanent capital.

Upon the associations' stockholder approval of such plans and approval of bank capitalization bylaws, most associations in the district would meet the minimum capital adequacy standard established by FCA based on their December 31, 1988, financial position. For the several FLBAs that may not meet the minimum capital adequacy standard, the bank will consider temporary reductions in those associations' 50 percent endorsement liability of loans, or some other form of capital or asset transfers, to a level necessary for the association to meet the minimum capital adequacy standard. For PCAs that may not meet the minimum capital adequacy standard, the bank will consider providing different forms of financial support if the PCA can project to be viable in the future. If associations do not meet the minimum capital adequacy standard, the distribution of permanent capital (payment of dividends, distribution of patronage surplus, retirement of permanent capital stock) would be suspended by the association board until the minimum capital adequacy standard is achieved.

Bank Capital Plan

The capital plan of the bank will be developed upon stockholder (association) approval of bylaws on bank capitalization, which are anticipated to be presented for stockholder votes in March and April of 1989. In general the bylaws of the bank will require from each PCA or FLBA a comparable amount of capital in relation to the amount of loan funds obtained from the bank. Until these bylaws on capitalization are adopted by stockholders, the bank will retain any net income as unallocated surplus.

The bylaws will implement the bank's business philosophy to conduct transactions, including the pricing of loan products and distribution of operating gains or losses, by patronage pools. The bank would establish and maintain separate patronage pools for the loan assets, liabilities and capital structure of the bank operations on an equitable and rational basis that results in each patron receiving its fair share of the earnings and bearing its fair share of total expenses of the bank. In determining the amount of patronage refunds, if any, the bank would take into account the portions of the bank's capital stock, funding costs, loan volume, bad debt losses and other items deemed appropriate by the board, attributable to each patron.

Upon approval of the bylaws by stockholders, the bank would begin to distribute (retire) over time certain capital invested by associations in the bank so that each association would maintain capital in relation to loan funds obtained from the bank at 5 percent. To meet capital adequacy objectives established by the board and to meet the minimum FCA standard the bank would retain earnings as necessary. Surplus allocated to FLBAs would be distributed to FLBAs so that they can adequately capitalize loans on which they have an endorsement liability. The bank may begin to retire capital investments held by PCAs over time dependent on the profitability of bank lending operations to PCAs. All such distributions would be at the discretion of the bank board and do not have a certain time frame or an amount for distribution.

Upon approval of FLBA capitalization bylaws, stock, equal to 5 percent of the annual average of loans outstanding serviced by FLBAs, would be converted to permanent capital of the bank and would not be included in the determination of an FLBA's minimum capital adequacy standard. Since FLBAs issue and maintain stock based on the original amount of a loan (not the balance) a certain amount of the stock received from borrowers would be used by FLBAs in meeting their minimum capital adequacy standard.

At December 31, 1988, the bank exceeded the minimum permanent capital adequacy standard established by FCA. In February 1989 the bank purchased $940.4 million of loans from the FLB of Jackson in Receivership. Since this was a purchase, borrowers were not required to purchase stock in the bank simultaneously with the purchase transaction. The bank is presently soliciting stock purchases from these borrowers to restore the initial negative impact to the bank's capital ratio resulting from this purchase. Borrowers deciding not to purchase stock will be charged a higher interest rate to generate the necessary capital, in lieu of stock investments, to achieve the minimum capital adequacy standard.

NOTE 6 — LOANS

Loans consisted of the following:

	December 31,		
	1988	1987	1986
Long-term farm mortgage	$ 2,072,835	$ 2,123,954	$ 2,238,291
Rural home	135,765	142,285	161,960
Farm-related business	8,853	9,209	8,525
Production and intermediate-term	724,836	750,714	839,961
OFIs	52,491	87,220	97,980
Other	30,286	80,791	72,154
Less participations sold	9,479	17,230	5,036
Total	$ 3,015,587	$ 3,176,943	$ 3,413,835

The following table presents information concerning nonaccrual and restructured loans. Restructured loans are loans whose terms have been modified and on which concessions have been granted because of borrower financial difficulties.

	December 31,		
	1988	1987	1986
Nonaccrual	$ 154,220	$ 152,680	$ 156,930
Restructured	$ 3,526	$ 1,158	$ 8,276
Interest which would have been recorded under original terms	$ 19,205	$ 19,615	$ 26,823
Less interest recorded	5,645	7,808	7,089
Interest not recognized	$ 13,560	$ 11,807	$ 19,734

There were no material commitments to lend additional funds to debtors whose loans were classified as nonaccrual or restructured at December 31, 1988.

Loans past due 90 days or more still accruing interest at December 31, 1988, amounted to $44,292. Such loans are well secured and in the process of collection. Included in nonaccrual loans are $12,374 of loans on which interest income is recognized when cash payments are received.

NOTE 7 — ALLOWANCE FOR LOAN LOSSES

A summary of changes in the allowance for loan losses follows:

	December 31,		
	1988	1987	1986
Balance at beginning of year	$ 133,636	$ 161,854	$ 145,536
Provision (negative) for loan losses	7,366	(7,448)	33,797
Loans charged off	30,230	28,349	25,613
Recoveries	6,221	7,579	8,134
Balance at end of year	$ 116,993	$ 133,636	$ 161,854

NOTE 8 — CASH AND INVESTMENT SECURITIES

The following is a summary of cash and investment securities:

	December 31,		
	1988	1987	1986
Cash	**$ 16,929**	$ 14,829	$ 22,262
Federal funds	**866,178**	858,150	1,074,700
U.S. Treasury securities, at par	**4**	4	21
Systemwide Funding Reserve	**—**	161,295	110,308
Other securities, at par	**56,100**	39,089	203,779
Unamortized premium (discount) net	**—**	(125)	(893)
Total	**$ 939,211**	$ 1,073,242	$ 1,410,177

The Systemwide Funding Reserve (SFR) is a separate liquidity pool managed for the benefit of the system. Investment securities are acquired by the issuance of consolidated systemwide debt. The bank's portion of the assets, liabilities, income and expense of the SFR is reflected in the combined financial statements. The bank discontinued use of the SFR in March 1988.

The maturity, approximate market value and yield of investment securities at December 31, 1988, were as follows:

	Federal Funds		U.S. Treasury Securities	
	Market Value	Yield	Market Value	Yield
In 1 year or less	$ 871,139	9.56%	$ —	—
After 1 through 5 years	—	—	2	8.76%
After 5 through 10 years	—	—	1	4.17%
Total	$ 871,139	9.56%	$ 3	7.45%

	Other		Total	
	Market Value	Yield	Market Value	Yield
In 1 year or less	$ 56,723	9.14%	$ 927,862	9.53%
After 1 through 5 years	—	—	2	8.76%
After 5 through 10 years	—	—	1	4.17%
Total	$ 56,723	9.14%	$ 927,865	9.53%

The approximate market value of securities at December 31, 1987, and 1986, was $1,066,023 and $1,391,810, respectively.

NOTE 9 — PREMISES AND EQUIPMENT

Premises and equipment consisted of the following:

	December 31,		
	1988	1987	1986
Land	$ 2,360	$ 2,555	$ 2,551
Buildings and improvements	33,077	33,410	33,295
Furniture and equipment	12,809	13,831	13,241
	48,246	49,796	49,087
Less accumulated depreciation	16,090	15,665	13,068
Total	$ 32,156	$ 34,131	$ 36,019

Depreciation expense for the years ended December 31, 1988, 1987 and 1986, was $2,829, $3,444 and $3,031, respectively.

NOTE 10 — OTHER ASSETS AND DEFERRED CHARGES

Other assets and deferred charges consisted of the following:

	December 31,		
	1988	1987	1986
Unamortized debt issue costs	$ 1,077	$ 1,348	$ 2,141
Accounts receivable	5,631	3,858	7,258
Land investment	1,902	1,899	1,899
Other	8,664	6,198	4,875
Total	$ 17,274	$ 13,303	$ 16,173

NOTE 11 — CONSOLIDATED SYSTEMWIDE BONDS, CONSOLIDATED BANK AND OTHER BONDS AND CONSOLIDATED SYSTEMWIDE NOTES

The bank's participation in consolidated systemwide bonds, which are the joint and several obligation of the Farm Credit System, at December 31, 1988, was as follows:

Maturity	Weighted Average Interest Rate	Amount
1989	9.12%	$ 1,196,942
1990	10.48%	323,957
1991	9.53%	470,981
1992	9.48%	106,227
1993	9.22%	204,425
Subsequent years	11.90%	281,675
		$ 2,584,207

The bank's participation in consolidated bank bonds which are the joint and several obligation of the FCBs and the FLB of Jackson in Receivership, and other bonds was as follows:

	Consolidated Bank Bonds	
Maturity	Weighted Average Interest Rate	Amount
1989	—	$ —
1990	8.24%	20,500
1991	7.99%	17,200
1992	—	—
1993	—	—
Subsequent years	8.23%	44,344
		$ 82,044

The average interest rate of all bonds at December 31, 1988, 1987 and 1986, was 9.57 percent, 9.48 percent and 9.24 percent, respectively.

Consolidated systemwide notes are issued with maturities of 5 to 365 days as a joint and several obligation of all banks of the Farm Credit System. The average maturity of such notes at December 31, 1988, was 33 days (1[illegible] days at December 31, 1987, and 39 days at December 31, 1986) and the effective weighted average interest rate was 8.86 percent (7.60 percent at December 31, 1987, and 6.15 percent at December 31, 1986).

The bank is a participant in a hedging program which enables it to obtain term funds at fixed rates and varying maturities on a daily basis in addition to the regularly scheduled issuances of systemwide term bonds. This program is managed and administered by the Funding Corporation which enters into futures contracts to reduce the risk of interest rate fluctuations. Net gains or losses from hedging activities are allocated to the bank based on its participation and are recorded as an adjustment to interest expense. Changes in the market value of a futures contract are recognized when the contract is closed out. Realized gains or losses are amortized over the life of the permanent debt issuance.

On March 1, 1988, the bank issued $175 million of a three-year systemwide bond and simultaneously entered into a three-year interest rate swap transaction having a notational principal amount of $175 million. Under the terms of the swap contract, the bank receives periodic payments based on a fixed rate of interest and makes payments based on the three-month London Interbank Offered Rate. The effect of this transaction has been to provide the bank with funding which is sensitive to changes in market interest rates while extending the actual maturity of the debt.

The bank is required by the Farm Credit Act and FCA regulations to maintain defined assets (collateral) at least equal to the total amount of debt obligations outstanding for which it is primarily liable, as a condition for participation in the issuance of systemwide debt. At December 31, 1988, the bank had such collateral totaling $3,908,344 and obligation totaling $3,638,067, resulting in excess collateral of $270,277.

NOTE 12 — NOTES PAYABLE AND LINES OF CREDIT

Notes payable consisted of the following:

	December 31,		
	1988	1987	1986
Systemwide Funding Reserve	$ —	$ 163,005	$ 110,825
Other	860	2,423	1,394
Total	$ 860	$ 165,428	$ 112,219

The bank had no commercial bank lines of credit at December 31, 1988.

NOTE 13 — RETIREMENT AND THRIFT PLANS

The bank and associations participate in a multiple employer districtwide defined benefit retirement plan. Such plan is noncontributory and covers substantially all district employees. Benefits are based on salary,and years of service.

The net pension expense included in the Combined Statement of Operations for 1988 and 1987 is comprised of the following:

	1988	1987
Service cost	$ 1,040	$ 884
Interest cost on projected benefit obligation	2,135	2,007
Return on plan assets	(3,052)	360
Net amortization and deferral	(1,357)	(4,262)
Net pension expense	$ (1,234)	$ (1,011)

The 1988 and 1987 actuarial computations, using the "projected unit credit method," assumed a discount rate on benefit obligations of 8 percent, an expected long-term rate of return on plan assets of 8 percent and annual salary increase of 5 percent over the average remaining service lives of employees under the plan.

The provisions of Statement of Financial Accounting Standards No. 87, "Employers' Accounting for Pensions," were adopted prospectively in 1987; accordingly, income for 1986 has not been restated. The net effect of the change in accounting method on the results of operations is not significant. Pension expense for 1986 was $1,774.

The table of actuarially computed benefit obligations and net assets of the district pension plan is presented below at January 1, 1988 and January 1, 1987.

	1988	1987
Actuarial present value of benefit obligations:		
Vested benefit obligation	$ 22,505	$ 22,430
Nonvested benefit obligation	1,151	1,199
	23,656	23,629
Additional benefits based upon estimated future salary levels	4,722	4,717
Projected benefit obligation	28,378	28,346
Plan assets at fair value	41,442	40,400
Plan assets in excess of projected benefit obligation	13,064	12,054
Unrecognized net gain (or loss)	2,008	3,018
Unrecognized net asset	(13,763)	(13,763)
	$ 1,309	$ 1,309

Plan assets are stated at fair value and consist of equities, fixed income, debt instruments and GIC insurance contracts.

The bank and associations also participate in a districtwide Thrift Plan. Such plan requires the bank and associations to match 50 percent of employee contributions up to a maximum employee contribution of 6 percent of basic salary. Contributions were $614, $856 and $900 for 1988, 1987 and 1986, respectively.

NOTE 14 — RELATED PARTY TRANSACTIONS

In the ordinary course of business, the bank and associations may enter into loan transactions with officers and directors of the bank or associations and other organizations with which such persons may be associated. Such loans are subject to special terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with unrelated borrowers. Total loans to such persons at December 31, 1988, amounted to $166,216. During

1988, $49,556 of new loans were made and repayments totaled $51,466. Such loans outstanding to directors and officers of the bank at December 31, 1988, did not involve more than a normal risk of collectibility. Disclosure on individual associations' officers and directors is found in their individual annual reports.

NOTE 15 — CONTINGENT LIABILITIES AND LITIGATION

In the normal course of business, the bank and associations have various outstanding commitments and contingent liabilities, such as letters of credit and commitments to extend credit which are not reflected in the accompanying financial statements.

The bank is primarily liable for its portion of systemwide debt obligations. Additionally, the bank is contingently liable for the consolidated systemwide bonds and notes of the other system banks. The total consolidated bank and systemwide debt obligations of the system at December 31, 1988, was approximately $53.6 billion. See Note 4, "Liquidation of the Federal Land Bank of Jackson and Related Uncertainty," for discussion on joint and several liability related to the FLB of Jackson.

As more fully described in Note 3, "Implementation of the Agricultural Credit Act of 1987," system banks and associations are ultimately responsible for the repayment of interest initially funded by the Secretary of the Treasury pursuant to the 1987 Act. All institutions of the system shall repay on a fair and equitable basis, at such levels, and on such dates as the FCA determines appropriate.

Actions are pending against the bank and associations in which claims for monetary damages are asserted. On the basis of information now at hand, management and counsel are of the opinion that the ultimate liability, if any resulting therefrom, would not be significant in relation to the combined financial position of the bank and associations.

NOTE 16 — QUARTERLY FINANCIAL INFORMATION (UNAUDITED)

Quarterly results of operations for the year ended December 31, 1988 follow:

	1988				
	First*	Second*	Third	Fourth	Total
Net interest income	$ 15,543	$ 16,387	$ 14,327	$ 14,657	$ 60,914
Provision for loan losses	(660)	5,801	(120)	2,345	7,366
Other expenses, net	16,348	9,701	10,435	8,098	44,582
Financial assistance provided to (returned from) other Farm Credit System institutions	(44,071)	—	1,810	(20,583)	(62,844)
Net income	$ 43,926	$ 885	$ 2,202	$ 24,797	$ 71,810

*Restated for the merger of the Federal Land Bank and the Federal Intermediate Credit Bank.

NOTE 17 — BANK ONLY FINANCIAL DATA

Condensed financial information of the bank is presented below:

	December 31,		
	1988	1987*	1986*
Statement of Condition			
Loans, net of allowance for loan losses of $47,836, $55,674 and $65,592, respectively	$ 2,853,859	$ 2,992,830	$ 3,211,815
Cash and investment securities	930,071	1,056,825	1,386,996
Accrued interest receivable	88,890	97,491	113,266
Due from Financial Assistance Corporation	19,898	—	—
Other property owned	40,588	22,382	15,708
Other assets	45,961	48,093	58,342
Total assets	$ 3,979,267	$ 4,217,621	$ 4,786,127
Consolidated bonds and notes	$ 3,446,561	$ 3,517,541	$ 4,132,694
Other liabilities	196,942	431,838	392,778
Total liabilities	3,643,503	3,949,379	4,525,472
Capital stock and participation certificates	188,433	195,323	202,704
Surplus	147,331	72,919	57,951
Total capital	335,764	268,242	260,655
Total liabilities and capital	$ 3,979,267	$ 4,217,621	$ 4,786,127

	Year Ended December 31,		
	1988	1987*	1986*
Statement of Operations			
Interest income	$ 344,542	$ 365,222	$ 423,495
Interest expense	305,782	325,019	369,944
Net interest income	38,760	40,203	53,551
Provision for loan losses	945	(6,535)	9,862
Net interest income after provision for loan losses	37,815	46,738	43,689
Other income	3,460	3,574	3,411
Compensation expense to associations for originating and servicing loans	8,014	9,190	7,153
Financial assistance provided to (returned from) other Farm Credit institutions	(65,492)	—	113,511
Other expense	18,399	25,041	19,683
Net income (loss)	$ 80,354	$ 16,081	$ (93,247)

*Restated for the merger of the Federal Land Bank and Federal Intermediate Credit Bank.

Price Waterhouse

One American Center, Suite 2000
600 Congress Avenue
Austin, TX 78701

Telephone 512 476 6700

February 23, 1989

To the Board of Directors and Stockholders of the
Farm Credit Bank of Texas and Texas District Associations

REPORT OF INDEPENDENT ACCOUNTANTS

We have audited the accompanying combined statement of condition of the Farm Credit Bank of Texas and the Texas District Associations as of December 31, 1988, 1987 and 1986, and the related combined statement of operations and of changes in capital for each of the three years in the period ended December 31, 1988, the combined statement of cash flows for the year ended December 31, 1988, and the combined statement of changes in financial position for each of the two years in the period ended December 31, 1987. These financial statements are the responsibility of the bank's and associations' management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As more fully described in Note 2, the Farm Credit Bank of Texas has not recorded its obligation to repay the third quarter 1986 capital preservation accruals because the Agricultural Credit Act of 1987, enacted in 1988, prohibits inclusion of these obligations for any financial reporting purpose. Generally accepted accounting principles require that such an obligation be included in the 1988 financial statements.

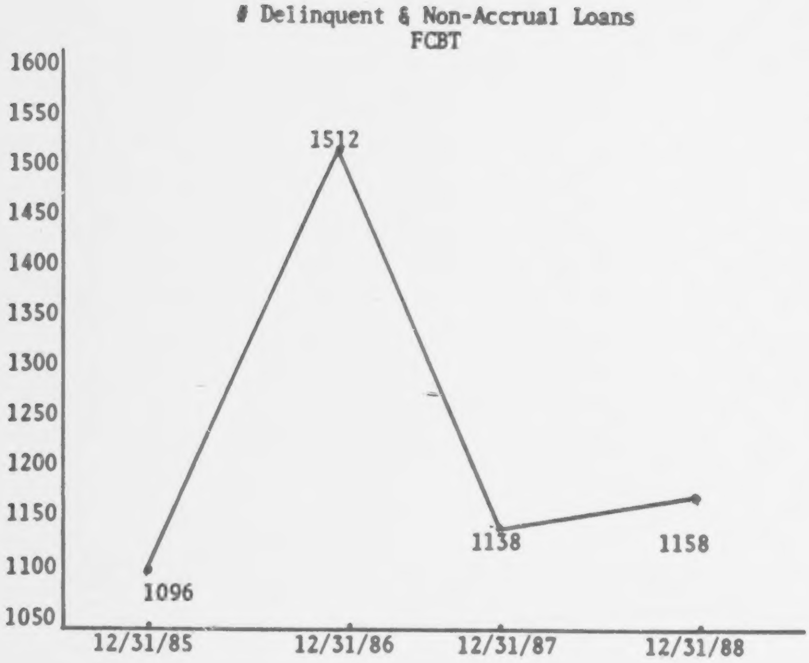
In our opinion, except for the effects on the 1988 financial statements of not recording certain liabilities as discussed in the third paragraph of this report, the combined financial statements audited by us present fairly, in all material respects, the financial position of the Farm Credit Bank of Texas and the Texas District Associations at December 31, 1988, 1987 and 1986, and the results of their operations for each of the three years in the period ended December 31, 1988, their cash flows for the year ended December 31, 1988 and the changes in their financial position for each of the two years in the period ended December 31, 1987, in conformity with generally accepted accounting principles.

As described in Note 2, in 1988 the Farm Credit Bank of Texas and Texas District Associations adopted prospectively the provisions of Statement of Financial Accounting Standards No. 95, "Statement of Cash Flows."

As described in Note 4, the Federal Land Bank of Jackson, which is in receivership, currently has systemwide obligations outstanding on which it is primarily liable and on which all other Farm Credit System banks are jointly and severally liable. These obligations, which mature in 1990 and 1991 will be repaid, in part, through financial assistance to the Farm Credit System or through other means which could include a call upon other Farm Credit System banks for such repayments by the Farm Credit Administration. It cannot be determined presently by which means these obligations will be repaid. The accompanying combined financial statements contain no provision for liability, if any, which the Farm Credit Bank of Texas might be required to assume in connection with the settlement of the Federal Land Bank of Jackson's systemwide obligations.

Price Waterhouse

EXHIBIT C


# Delinquent & Non-Accrual Loans
FCBT
1600
1550
1500
1450
1400
1350
1300
1250
1200
1150
1100
1050
1512
1096
1138
1158
12/31/85
12/31/86
12/31/87
12/31/88

ATTACHMENT D

Peak Value Per Acre for Agricultural Land by Year for Selected States

State	Peak Year	Peak Value Per Acre	1987 Value Per Acre
Ohio	1981	$1,831	$ 942
Indiana	1981	2,031	931
Illinois	1981	2,188	1,040
Iowa	1981	1,999	748
Minnesota	1981	1,281	493
Wisconsin	1981	1,152	626
Mississippi	1981	1,034	654
Louisiana	1981	1,454	734
Oklahoma	1982	725	428
Texas	1985	652	482

Source: "Agricultural Land Values and Markets," USDA, Economic Researh Service, CO-90, August, 1985 and AR-10, June 1988.

ATTACHMENT E

Farm Credit Banks of Texas

LOAN SERVICING MEMORANDUM

NUMBER 4040

DATE: January 13, 1988

TO: All Federal Land Bank Associations

FROM: Gary M. Vaughn
Gary M. Vaughn, Senior Vice President
Loan Administration

SUBJECT: Impact on Loan Servicing Issues caused by the Agricultural Credit Act of 1987

The passage of the Agricultural Credit Act of 1987 impacts loans in the process of collection action and foreclosure. As soon as the Act is received and studied you will be provided instructions on how to proceed in this area. However, the Bank and Associations are still charged with exercising due diligence during this interim period. Until further procedures are received, operations will comply with the following guidelines:

Forbearance Considerations

Borrowers who have already submitted a forbearance plan or request should be treated as if nothing has changed. In other words, the Association and the Bank will continue to process those requests under the normal procedures. This also applies to borrowers who have been mailed the "Notice of Collection Action Letter" but have not yet responded. Because borrowers in these two categories have been granted rights under the previous Act, those rights must be allowed to run their natural course at least to the point of approval or denial of the forbearance plah. The new Act does not entirely suspend existing forbearance negotiations.

Effective immediately, do not mail to any borrower a "Notice of Collection Action Letter". Standard delinquent loan collection efforts can proceed, but the Forbearance Policy and forbearance applications should not be delivered to any additional borrowers.

Loans in Foreclosure Status

If you have posted the foreclosure papers for loans scheduled for a February sale, those postings should be pulled down and the foreclosure papers returned to the Bank.

The foreclosure papers for loans scheduled for a February sale and not yet posted should also be returned to the Bank.

All future foreclosures are suspended immediately pending the required restructuring analysis.

Loans that have already been recommended for foreclosure by the Association Board of Directors should be sent to the Bank as in normal procedures.

The Association should not adopt any future foreclosure resolutions on any loans effective with the receipt of this letter.

Acquired Property Considerations

The Act contains a variant form of "right of first refusal" on the sale and leasing of acquired property.

Effective immediately, the Association should disclose to a prospective purchaser or lessor, that a right of first refusal to the previous owner exists in accordance with the Act. The Bank will insert accommodating language in the earnest money contract or lease agreement to address this requirement with the third party. Because of the potential liabilities involved, you are urged to contact the Acquired Property Department for detailed guidance should someone express an interest in purchasing or leasing an acquired property.

The Bank is working diligently to formulate the policy and procedures that are required under the new Act. Until those are developed, your operations should conform to the guidelines within this letter. Please contact your Regional Vice President or a member of this department should you have additional questions.

cc: FLBA Branch Offices
Regional Vice Presidents

ATTACHMENT F

Farm Credit Banks
of Texas

CERTIFIED MAIL

February 8, 1988

Dear Borrower:

The Federal Land Bank of Texas has elected to sell the property formerly owned by you and acquired by the Bank through foreclosure on January 5, 1988. This property consists of 280 acres more or less and served as collateral for Loan Number 419302.

In accordance with provisions of the Agricultural Credit Act of 1987, you are hereby notified that you have the right to purchase this property for $63,000.00 cash. Or you have the right to submit an offer to purchase the property at a cash price less than that cited above, which the Bank may, but is under no obligation to accept.

In either case in order to exercise your right to purchase this property, or make an alternative offer, YOU MUST EXECUTE THE ENCLOSED SALES CONTRACT AND ENCLOSE A CASHIER'S OR CERTIFIED CHECK FOR THE EARNEST MONEY IN AN AMOUNT EQUAL TO eight and one-half percent (8.5%) OF THE CONTRACT SALE PRICE. The check must be made payable to the title company named in Section 4 of the sales contract. If you intend to make a cash offer for less than that cited above you must amend and initial both Section 3(A) to reflect your offer and Section 4 to show the appropriate earnest money that you must forward with the executed sales contract to the Bank.

The Federal Land Bank will not provide you financing for the purchase of the property, nor is the denial of such financing considered a term or condition of sale.

You have 15 days from the receipt of this letter to respond by either 1) agreeing to purchase the property for $$$$ cash, or 2) by making an offer to purchase the property for a lesser cash price which the Bank may accept or reject, by your execution of this contract. TO BE VALID THIS CONTRACT MUST BE PROPERLY EXECUTED AND MAILED TO:

FEDERAL LAND BANK OF TEXAS
ACQUIRED PROPERTY DEPARTMENT
P. O. BOX 15919
AUSTIN, TEXAS 78761

Cordially,

Delbert M. Hegel, Director
FLB Acquired Property

ATTACHMENT G

June 2, 1989

Mr. Bill B. Baker, President
Federal Land Bank Association of Edna
P. O. Drawer 580
Edna, TX 77957

Dear Mr. Baker:

I am contacting you in regard to our recent application for Distressed Loan Restructuring with the Federal Land Bank Association of Edna.

I would like to thank the Board of Directors as well as yourself for your efforts and cooperation in helping us obtain a workable plan so that we may continue our rice farming operation. Our relationship with the Federal Land Bank of Edna has always been excellent and we feel that trend will continue. We also feel that your approval of our Distressed Loan Restructuring plan will help keep our rice operation viable for many years in the future.

Thanks again for your assistance.

Sincerely,

BORROWER

May 30, 1988

Federal Land Bank Asso. of Haskell
509 S. First Street
Haskell, Texas 79521

Dear Gentlemen:

We have received your notice of intent to begin foreclosure proceedings on our loans with Federal Land Bank and we have also received information concerning your restructuring policy.

I have visited with Mr. Dale Bullinger on several occasions concerning the status of our delinquent loan payments. I have conveyed to Mr. Bullinger that we are not interested in restructuring our loans. We have simply ask for some additional time (August 1988) to make these payments. We sustained heavy chemical damage to our 1987 potato crop and as a result were caught short of needed operating capital. We currently have a lawsuit filed against the chemical company responsible for our losses. Our attorneys are very optimistic about recovering our losses through legal action. We should be in court no later than October of this year.

I am enclosing our projected profit & loss statements for this year so you may see that we should cash flow enough to make our land payments. I respectfully request that you work with us. We will get our loans current this August.

Sincerely,

BORROWER

Encl.

Dear Sir.

It is hard to say what our projected income for 1988 will be. All I can say is our business has improved each month. We opened May 2, 1987 and we grossed around $53000. In Dec. the truck grossed around $2000. It will take time to get the feed store and hauling built up. It takes a lot of money to get a new business started but it shows a brighter future than the Oil Field does right now. So please don't give up on us we are going to make it. Please just give us a little more time to get caught up.

Thanks

BORROWER

DISTRESSED LOAN RESTRUCTURING APPLICATION

Loan Number: __________ North Central Texas FLBA of Breckenridge

APPLICANT _

ADDRESS _ BORROWER

TYPE OF RESTRUCTURING REQUESTED:

Specify your request in detail: Since we have been able to basically make our payments current, we do not request restructuring unless we could refinance to lower our payments. We request that you do not foreclose and respect our financial problems have made this effort necessary. We plan to keep our payments current and have hope of the improvement economy in our area.

6-13-88 (Date)

SIGNATURE: BORROWER

(Must be signed by each person liable)

For your application to receive consideration, the items checked below must be submitted by each person liable.

☒ 1. Current financial statement (attached form may be used.)

☒ 2. Documentation of income for the past three years (copies of IRS returns, etc.)

☒ 3. Projected cash flow (detailed income and expenses.)

☒ 4. Written plan of action establishing in detail your ability to repay the loan. This should be supported with documentation to fully support your plan.

☒ 5. Executed loan agreement to provide a financial and income statement annually (Form 1191 attached).

Additional information may be required by the association.

DISTRESSED LOAN RESTRUCTURING APPLICATION

Loan Number: ____________ ____________ **FLBA of** Mason 617

APPLICANT

ADDRESS BORROWER

TYPE OF RESTRUCTURING REQUESTED:

Specify your request in detail: I do not request any change on my loan at this time. I plan on being caught up on my home loan by the end of this month. At this time I have pending over $24,000 in real estate commissions. Should they all close, my cash flow will be improved.

____________ (Date) SIGNATURE: BORROWER

(Must be signed by each person liable)

For your application to receive consideration, the items checked below must be submitted by each person liable.

- ☑ 1. Current financial statement (attached form may be used.)
- ☑ 2. Documentation of income for the past three years (copies of IRS returns, etc.)
- ☑ 3. Projected cash flow (detailed income and expenses.) See attached
- ☑ 4. Written plan of action establishing in detail your ability to repay the loan. This should be supported with documentation to fully support your plan.
- ☐ 5. Executed loan agreement to provide a financial and income statement annually (Form 1191 attached).

Additional information may be required by the association.

Form [illegible] (Rev [illegible])

DISTRESSED LOAN RESTRUCTURING APPLICATION

Loan Number: ____________ ____________ FLBA of McKinney

APPLICANT

ADDRESS BORROWER

TYPE OF RESTRUCTURING REQUESTED:

Specify your request in detail: In view of the fact that my present financial condition makes payment or restructuring of my loan impossible or impractical, I have put the property on the market to raise funds to liquidate the loan. I am presently negotiating with a prospective buyer who was found through a licensed realtor in Greenville. Alternatively, I am also in discussion with a family member who is financially capable of advancing funds to bring my loan current or of personally assuming payment of the loan, with your consent, of course.

I, therefore, request that FLBA-McKinney forego resort to its security at this time and grant me an extension of one hundred twenty (120) days to market the property under conditions other than duress. In this way I feel that I can realize enough from a sale to salvage my equity above the loan balance.

February 21, 1989
(Date)

SIGNATURE: BORROWER

(Must be signed by each person liable)

For your application to receive consideration, the items checked below must be submitted by each person liable.

☑ 1. Current financial statement (attached form may be used.)
☑ 2. Documentation of income for the past three years (copies of IRS returns, etc.)
☑ 3. Projected cash flow (detailed income and expenses.)
☑ 4. Written plan of action establishing in detail your ability to repay the loan. This should be supported with documentation to fully support your plan.
☑ 5. Executed loan agreement to provide a financial and income statement annually (Form 1101 attached).

Additional information may be required by the association.

Form [illegible] (Rev. [illegible])

DISTRESSED LOAN RESTRUCTURING APPLICATION

Loan Number: ____ ______________ FLBA of Temple, Texas

APPLICAN

ADDRESS BORROWER

TYPE OF RESTRUCTURING REQUESTED:

Specify your request in detail: ① To Extend the Jan 1, 1988 Payments until Oct. 1, 1988 including Penalties as required.

No Further Restructuring of Amortization Schedule Would Be Requested.

No Forgiveness of any Principal, Interest, or penalties is requested.

6/28/88 (Date)

SIGNATURE: BORROWER

(Must be signed by each person liable)

For your application to receive consideration, the items checked below must be submitted by each person liable.

- ☑ 1. Current financial statement (attached form may be used.)
- ☑ 2. Documentation of income for the past three years (copies of IRS returns, etc.)
- ☑ 3. Projected cash flow (detailed income and expenses.)
- ☑ 4. Written plan of action establishing in detail your ability to repay the loan. This should be supported with documentation to fully support your plan.
- ☑ 5. Executed loan agreement to provide a financial and income statement annually (Form 1101 attached).

Additional information may be required by the association.

Form [illegible] (Rev. [illegible])

ATTACHMENT H

FARM
CREDIT
BANK
OF TEXAS

P.O. BOX 15919 • AUSTIN, TEXAS 78761 •

MEMORANDUM
No. 89:183

TO: Production Credit Association Presidents

FROM: J. E. Lewis
Senior Vice President, PALO Credit and Operations Department

DATE: May 25, 1989

SUBJECT: Texas Voluntary Agriculture Loan Mediation Program

During the past year you have read and heard about a mediation program being developed in Texas for agriculture loans. The program is now operative under the administration of Texas Tech University. Dr Gary D. Condra is in charge of the program. The Agriculture Credit Act of 1987 provided for the Farmers Home Administration's and the Farm Credit System's participation in certified state loan mediation programs.

The Farm Credit Bank of Texas has been monitoring the development of this mediation program from its conception. We considered our involvement necessary in order to moderate any detrimental effects to our organization or our borrowers, individually or collectively.

To bring you up to date we are enclosing two items. First is a copy of Dr. Condra's speech outlining and explaining the mediation program. This information was presented recently here in the bank to a group of bank officers and credit people. The second paper is a letter from Dr. Condra explaining that the $25 per hour charge to each creditor has been suspended. The creditors will have no expense other than their time for the mediation. We suggest you keep well informed on the mediation program.

None of us enjoy dealing with adverse credit problems and mediation will not resolve all of our problems. However, we do see advantages in the mediation process. It brings in an impartial outsider knowledgeable in agriculture. It is a means to get the borrower back to the negotiation table without having lawyers involved. It should be far less expensive and more expedient than a lawsuit or bankruptcy court.

As of this date no Texas PCA has been involved in the mediation program. Should one of your members request mediation we suggest that you participate with a positive attitude. When you become involved in the mediation program, we would like to be kept advised of the progress and results.

Should you have any questions on the mediation program, please feel free to contact me.

JEL:vm
0046S

THE FARM CREDIT SYSTEM

Texas Agricultural Loan Mediation Program
Texas Tech University
P.O. Box 4700
Lubbock, Texas 79409
(806) 742-1949

MEDIATING AGRICULTURAL LOAN DISPUTES IN TEXAS[1]

by

Gary D. Condra[2]

The Agricultural Credit Act of 1987 provided for the participation of Farmers Home Administration (FmHA) and the Farm Credit System (FCS) in certified state loan mediation programs. This legislation also authorized a federal matching grant program to fund these programs. Texas Tech University was designated by Governor Clements as the state agency to operate the state loan mediation program in Texas. The Texas Agricultural Loan Mediation Program (TALM) operates as a cooperative program of the Department of Agricultural Economics and the Division of Continuing Education at Texas Tech. It has been certified by FmHA as a qualified program for federal funding and participation by FmHA and the FCS. In addition to the guidelines established by FmHA and generally accepted practices in the alternative dispute resolution field, TALM is governed by Title 7 of the Texas Civil Practices and Remedies Code. Texas Tech furnishes housing, some

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[1] Presented to a meeting of the Directors of Dispute Resolution Centers in Texas, Austin, Texas, April 21, 1989.

[2] Director of the Texas Agricultural Loan Mediation Program and Visiting Associate Professor of Agricultural Economics, Department of Agricultural Economics, Texas Tech University, Lubbock, Texas.

Room 218 Agricultural Sciences Building
"An Equal Opportunity/Affirmative Action Institution"

personnel, and other overhead to the program, but TALM is funded primarily with user fees and federal funds.

Definition of Mediation

Mediation is a voluntary alternative to litigation in which an impartial third party intervenes to facilitate communication and assist the parties in reaching a mutually agreeable solution to their dispute. Thus it is really just an extension of the normal negotiating process, with the assistance of an impartial third party. It is designed to create a "win-win" solution rather than the "win-lose" solution which is normally reached in litigation. While mediation often involves joint meetings of the parties, it is a process which involves much more than just a meeting or a series of meetings. Although not readily identifiable in many mediation situations, the following twelve stages are usually present to some degree in every successful mediation:

Stage 1 : Initial Contacts with the Disputing Parties
Stage 2 : Selecting a Strategy to Guide Mediation
Stage 3 : Collecting and Analyzing Background Information
Stage 4 : Designing a Detailed Plan for Mediation
Stage 5 : Building Trust and Cooperation
Stage 6 : Beginning the Mediation Session
Stage 7 : Defining Issues and Setting an Agenda
Stage 8 : Uncovering Hidden Interests of the Disputing Parties
Stage 9 : Generating Options for Settlement
Stage 10: Assessing Options for Settlement
Stage 11: Final Bargaining
Stage 12: Achieving Formal Settlement

Role of the Mediator

The Mediator is an impartial third party who represents neither the borrower nor the lender. Thus, the mediator is not an advocate for either party. The Mediator may advise, counsel, and assist the parties on ways to come to an agreement, but does not tell the parties how they should conduct their business or personal affairs. Instead, it is the Mediator's job to insure that all participant's in the mediation process get to speak and be heard, help define the issues, emphasize common goals, keep negotiations focused, facilitate the development and discussion of options, and reduce fault-finding. During the mediation process the Mediator is responsible for keeping the process orderly, fair, and moving forward.

Operational Procedures

Initiation of Mediation

The mediation process can be initiated by any party, i.e., any borrower or any lender. It should be emphasized that the program is not limited to FmHA and the FCS. A commercial bank can request mediation in exactly the same fashion. Texas is a "voluntary" mediation state, which means that mediation will not take place unless all necessary parties agree to mediate the dispute. However, in situations where a case is already in litigation, and if a court determines that a pending dispute is appropriate for referral to mediation, it may on its own motion, or the motion of a perty, refer the dispute to TALM, or another alternative dispute resolution organization.

When TALM receives a written request for mediation, TALM is responsible for contacting the other necessary parties to secure their written agreement to mediate. If the other necessary parties do not agree to mediate, the requesting party will be notified that mediation has been refused.

Collection and Analysis of Data

As soon as the parties agree to mediate, a Mediation Assistant is assigned to collect and analyze relevant data, such as delinquent and current loan payments, accounts payable, and cash flow available to service these debts. The purpose of this stage is to provide objective information to the Mediator and all of the parties to serve as a basis for analysis of settlement options. The Mediation Assistant is trained in financial analysis, has an agricultural background, and has some training in mediation. However, the Mediation Assistant will not serve as the Mediator in any case in which he or she has conducted the collection and analysis of data.

Assignment of the Mediator

At the appropriate time, a Mediator will be assigned to handle the case. The Mediator will be impartial, trained in mediation, and knowledgeable in agriculture and agricultural finance. If the Mediator assigned to a case is unacceptable to any of the parties, another Mediator will be assigned.

Informal Mediation

Informal mediation includes telephone calls and private meetings with the parties by the Mediation Assistant and the Mediator. The purpose of informal mediation is to collect data, help the Mediator understand the dispute, define the issues, and develop a mediation plan. But, emphasis is also placed on reaching agreements in the informal mediation phase to facilitate the settlement process.

Formal Mediation

The formal mediation phase primarily involves joint meetings of the parties with the Mediator. Meetings will be scheduled by the Mediator at mutually convenient times in a neutral location as close as possible to the parties. Meetings are private and attendance is restricted to the parties, members of the immediate family, and the Mediator. No stenographic record will be made of the proceedings, and notes taken from the meeting room will be restricted to those made by the Mediator.

Termination of Mediation

In keeping with the voluntary nature of the mediation process in Texas, any party can terminate the mediation process at any time, with or without cause, by written notification to TALM. The Mediator can also terminate the mediation process when it is his or her judgement that further efforts at mediation are no longer worthwhile.

Representation

TALM can not provide legal counsel or tax advice to any of the parties. Therefore, all parties are encouraged to seek such counsel to ensure that they make sound decisions in the settlement process. The Mediator and the Mediation Assistant will cooperate in private meetings with advocates, attorneys, and accountants representing any of the parties to the dispute.

However, representatives of the parties will not be allowed to be present, or to participate, in joint meetings of the parties. These representatives may be present at the site of joint meetings (outside the joint meeting room) so that they can be available to provide counsel to their clients. Joint meetings will be recessed at any time if a party requests such a recess to consult with their advocate, attorney, or accountant, either in person, or by phone.

Confidentiality

Under Texas law, a communication relating to the subject matter of an agricultural loan dispute, made by a participant in the mediation process, whether before or after initiation of litigation, is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding. Any record made in the mediation process is confidential, and the parties, or the Mediator, may not be required to testify in any proceedings relating to or arising out of the loan dispute or be compelled to disclose of confidential information or data relating to or arising out of the loan dispute. However, oral communication or written material used in the mediation process is admissible or discoverable if it is admissible or discoverable independent of the mediation process.

Texas law also provides that, unless expressly authorized by the disclosing party, the Mediator may not disclose to any other party information disclosed in confidence by any party and shall at all times maintain confidentiality with respect to communications relating to the loan dispute. Unless the parties agree otherwise, all matters, including the conduct and demeanor of the parties during the mediation process, are confidential and may never be disclosed to anyone, including the appointing court (when the case was initiated by referral of the court).

Exclusion of Liability

Neither TALM, nor any Mediator, nor any Mediation Assistant is a necessary party in judicial proceedings relating to the mediation of any loan dispute. Nor shall TALM, or any Mediator, or any Mediation Assistant be liable to any party for any act or omission in connection with the mediation of any loan dispute.

Costs

The borrower pays $250 at the time he or she applies for, or accepts, mediation. Creditors will not be charged for participation in the mediation process. The remainder of the costs of providing the mediation services are covered by federal funds and the contributions of Texas Tech University.

Advantages of Mediation

While there is no guarantee that the mediation process will produce a mutually agreeable solution, this approach to dispute resolution has some distinct advantages. Specifically, those advantages are:

1. Parties are directly engaged in the negotiation of the settlement.
2. The Mediator, as an impartial third party, can view the dispute objectively and can assist the parties in exploring alternatives that they might not have considered on their own.

3. Because mediation can be scheduled early in the dispute, a settlement can be reached much more quickly than in litigation.

4. Parties generally save money through reduced legal costs and less staff time.

5. Parties enhance the possibility of continuing a business relationship with each other.

6. Where appropriate, creative solutions or accommodations to special needs of the parties may become part of the settlement.

Texas Agricultural Loan Mediation Program
Texas Tech University
P.O. Box 4700
Lubbock, Texas 79409
(806) 742-1949

May 10, 1989

Marsha Martin
Farm Credit Banks of Texas
P.O. Box 15919
Austin, Texas 78761

Dear Marsha:

As you will probably recall, our operating plan called for a $250 flat charge to the borrower and a $25 per hour charge to each creditor for time spent by the mediator in a formal meeting of the creditors. We have run into some resistance among creditors, and as a consequence, we are suspending all charges to the creditors. While this will cause some financial hardship for the program, we deemed this action to be necessary because there is little reason to convene a meeting of the creditors without the participation of the creditors who may be necessary to develop a workable restructuring plan.

We hope that as this program proceeds, creditors will find that paying the mediator $25 per hour for the creditor's meeting would be considerably less expensive and more effective than paying their attorney to represent them in a Chapter 12 pre-hearing conference. We also hope that the creditors will find that ~~the~~ mediation process provides a great deal more flexibility than ~~more~~ traditional approaches to resolution of debt problems. However, in the meantime we are going to do our best to make this deal work financially without charging the creditors.

If you can assist us in publicizing this policy change, we would appreciate it very much. Also, if you have any questions, comments, or suggestions -- we would be glad to hear from you.

Sincerely,

Gary

Gary D. Condra
Director

cc: Kary Mathis
Mike Mezack
Staff

One American Center Suite
600 Congress Avenue
Austin, TX 78701

ATTACHMENT I

Price Waterhouse

June 14, 1989

Mr. Robert G. Vanwinkle
Chairman of the Board
Farm Credit Bank of Texas

Dear Mr. Vanwinkle:

We have applied certain agreed-upon procedures, as discussed below, in connection with the Farm Credit Bank of Texas (FCB) policies for restructuring "distressed loans" as defined in Section 4.14A of the Agricultural Credit Act of 1987 (the Act). These procedures were performed to assist you in determining whether FCB policies for restructuring distressed loans are in compliance with the Act, and that the FCB's policies have been adhered to during the period of March 1, 1988 (policy adoption) through May 31, 1989. It is our understanding that compliance with the Farm Credit Administration (FCA) rules and regulations embodied in 12CFR Sections 614.4512 and 614.4514-.4519 would satisfy the requirements of the Act as referred to above.

PROCEDURES

We performed the following procedures with respect to the FCB policies for restructuring distressed loans:

1. We read Section 4.14A of the Agricultural Credit Act of 1987 entitled "Restructuring Distressed Loans" and the related FCA regulations contained in 12CFR Sections 614.4512 and 614.4514-.4519 (the FCA regulations).

2. We compared the FCB policies surrounding distressed loan restructuring to the applicable sections of the FCA regulations as described in the preceding paragraph. The Bank's policies are attached as Exhibit A.

June 14, 1989
Mr. Robert G. Vanwinkle
Farm Credit Bank of Texas
Page two

3. We obtained delinquent loan reports (ML4381) from the period March 1988 to May 1989. These reports show each loan that was past due at month end, the amount delinquent, the outstanding balance, number of days past due and the month-end loan to appraised value percentage. We randomly selected ten loans (from five different Federal Land Bank Associations (FLBAs)) from these reports to determine whether a distressed loan restructure notice (DLR) was sent.

4. We randomly selected twenty loans (from nineteen different FLBAs) from summaries of distressed loans for which a DLR was sent to the borrower. We obtained the borrower loan files from the respective FLBAs and read file documentation to determine that a) borrowers were provided with adequate time to respond to the DLR as required in the FCA regulations, b) the decision reached by the FLBA credit officer was reasonable based on the available facts and in accordance with District policies, and c) the borrower was given timely notification of the decision and where appropriate, was informed of his right to appeal the decision to a District Credit Review Committee.

5. We randomly selected ten loans (from eight FLBAs) that were transferred to acquired property from summaries of all properties acquired during the period. We obtained the acquired property files and read documentation supporting the appraised values and estimated recovery values. For properties which have been sold, we compared actual sales prices to estimated recovery values to assess the reasonableness of values used when considering restructure or foreclosure alternatives.

FINDINGS

Steps 1-2: We believe that the FCB's policies comply with rules and regulations contained in 12CFR Sections 614.4512 and 614.4514-.4519.

Step 3: DLR notices were sent to four of the ten borrowers selected from delinquent loan reports. Each of these four loans was characterized by a poor repayment history, or a situation where the borrower acknowledged an inability to make payment for several months into the future. We found that for these four borrowers, the DLR was sent after the most recent installment was an average of 60 days past due.

Of the six loans for which no DLR was sent, three were subsequently brought current through payment, two were considered low risk based upon favorable repayment history and one involved a borrower which is currently in bankruptcy. The loan files indicate that where appropriate, the FCB pursues a variety of informal assistance alternatives prior to issuing a DLR.

Step 4: Exhibit B provides a summary of each loan file reviewed in conjunction with this step. The borrowers on all twenty loans for which DLRs were issued were given the required forty-five days to respond before further action was taken. In six cases, the borrowers made payment to bring the loans current before further action was required by the Bank or Association. Three borrowers submitted plans for reamortization that were accepted by the FCB on the basis of viability and realistic projections of net cash flows. The remaining eleven applications were denied for various reasons. Eight of the borrowers were determined to have nonviable operations requiring full liquidation of the collateral. In two instances, the borrowers were uncooperative or were unwilling to use all available resources to bring the loan current or provide additional collateral. In one instance, additional guarantors were requested but not provided by the borrower.

In general, borrowers whose applications for restructure were denied were given additional forbearance (ranging up to six months) to allow for payment through asset liquidation or refinancing with other creditors.

Step 5: Exhibit C provides a summary of acquired property statistics from the files reviewed in conjunction with this step. Eight of the ten properties in our selection have been sold or currently have offers outstanding. The net proceeds realized through the sale of these properties averaged 95% of the recovery values estimated when evaluating restructure and foreclosure alternatives. While there were both gains and losses recorded on the sale of these properties, the net loss averaged 10% of principal and interest outstanding. This is primarily the result of costs incurred to maintain or upgrade properties to salable condition.

SUMMARY

Our review of the above files and discussions with various FCB personnel indicate that the Bank and Association personnel pursue a variety of assistance alternatives at various stages prior to commencing foreclosure proceedings. A significant amount of the FCB's effort to bring the borrowers into compliance with their loan covenants occurs prior to issuing a DLR. In addition, if after issuing the DLR an acceptable restructure alternative cannot be reached, the loan files indicate that forbearance generally continues for a reasonable period of time to allow the borrower to seek other assistance alternatives. In summary, we found no deviations from the policies adopted by the FCB for restructuring of distressed loans.

June 14, 1989
Mr. Robert G. Vanwinkle
Farm Credit Bank of Texas
Page five

All information that we requested was made available to us during the course of performing the above procedures. All selections for loan testing were made by us.

Had we performed additional procedures, other matters might have come to our attention that would have been reported to you. This report relates only to the FCB policies for restructuring distressed loans and does not extend to any other items. We understand that this report will be included with testimony being provided to a Senate subcommittee on credit. This report is solely for your information with respect to that testimony and is otherwise not to be referred to or distributed for any purpose or to any person outside of the Farm Credit System.

Yours very truly,

Price Waterhouse

EXHIBIT A

Revised December 1988
Statement of Policy
Board of Directors
Farm Credit Bank of Texas

DISTRESSED LOAN RESTRUCTURING

AUTHORITY

Section 4.14A of the Farm Credit Act of 1971, as amended, required the district board to adopt a written policy to govern the restructuring of distressed loans, and to incorporate therein an explanation of procedures necessary for borrowers to avail themselves of their rights within the law. This policy shall constitute the restructuring policy of each lender (as defined below) within the district.

DEFINITIONS

1. Cost of Restructuring - In determining whether the potential cost to the lender of restructuring a distressed loan is less than or equal to the potential cost of foreclosure, the lender shall consider the following:

    a. the present value of interest income and principal foregone by the lender in carrying out the restructuring plan;

    b. reasonable and necessary administrative expenses involved in working with the borrower to finalize and implement the restructuring plan, including attorneys' fees, costs, and other expenses advanced by the lender pursuant to the loan documents;

    c. whether the borrower has presented a preliminary restructuring plan and cash-flow analysis taking into account income from all sources to be applied to that debt and all assets to be pledged, showing a reasonable probability that orderly debt retirement will occur as a result of the proposed restructuring;

    d. whether the borrower has furnished or is willing to furnish complete and current financial statements in a form acceptable to the lender;

    e. any other factors considered relevant by the lender that bear upon the individual restructuring decision, including but not limited to the following:

        1) whether the borrower is applying all income over and above necessary and reasonable living and operating expenses to the payment of primary obligations;

        2) whether the borrower has the financial capacity and the management skills to protect the collateral from diversion, dissipation, or deterioration;

3) whether the borrower is capable of working out existing financial difficulties, reestablishing a viable operation, and repaying the loan on a rescheduled basis.

2. Loan means a loan made to a farmer, rancher or producer or harvester of aquatic products, for an agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, producers or harvesters of aquatic products.

3. Borrower shall mean the person and/or persons, including entities, which are primarily or secondarily liable for repayment of the loan.

4. Distressed Loan means upon determination by a lender that:

   a. the borrower does not have the financial capacity to pay according to its terms, and

   b. exhibits one or more of the following characteristics:

      1) the borrower is demonstrating adverse financial and repayment trends;

      2) the loan is delinquent or past due under the terms of the loan contract;

      3) one or both of the factors listed in subparagraphs (1) and (2), together with inadequate collateralization, present a high probability of loss to the lender.

5. Application for Restructuring means a written request:

   a. from a borrower for the restructuring of a distressed loan in accordance with a preliminary restructuring plan proposed by the borrower as part of the application;

   b. submitted on the appropriate forms prescribed by the lender; and

   c. accompanied by sufficient financial information and repayment projections as required by the lender to support a sound credit decision.

6. Cost of Foreclosure includes:

   a. the difference between the outstanding balance due on a loan made by a lender and the liquidation value of the loan, taking into consideration the borrower's repayment capacity and the liquidation value of the collateral used to secure the loan;

   b. the estimated cost of maintaining a loan as a nonperforming asset;

c. the estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as the result of the foreclosure, including attorney's fees and court costs;

d. the estimated cost of changes in the value of collateral used to secure a loan during the period beginning on the date of the initiation of an action to foreclose or liquidate the loan and ending on the date of the disposition of the collateral;

e. all other costs incurred as the result of the foreclosure or liquidation of a loan.

7. Foreclosure Proceeding means:

a. a foreclosure or similar legal proceeding to enforce a lien on property, whether real or personal, that secures a nonaccrual or distressed loan; or

b. the seizing of and realizing on nonreal property collateral other than stock, participation certificates, allocated surplus, or investments in equity reserve in a Farm Credit System institution.

8. Restructuring includes rescheduling, reamortization, renewal, deferral of principal or interest, monetary concessions, and the taking of any other action to modify the terms of, or forbear on, a distressed loan in any way that will make it probable that the operations of the borrower will become financially viable.

9. Lender means:

a. an institution of the Farm Credit System in the Texas district that makes loans (as the term "loan" is defined above), excluding the National Bank for Cooperatives; and

b. Other Financing Institutions ("OFI") as defined in Section 1.7(b)(1)(B) of the Farm Credit Act of 1971, as amended, but only with respect to loans discounted or pledged by such OFI to the Farm Credit Bank of Texas (FCB).

POLICY

Each lender in the Texas Farm Credit District has an obligation to borrowers, stockholders, and investors in system debt obligations to collect all debts owed to the lender, and all borrowers are expected to comply with contractual loan terms and conditions. In those instances where the lender determines that a borrower's loan is distressed according to the definition included herein, then the lender shall give due consideration to restructuring it within the parameters of this policy.

NOTICE TO BORROWERS

On a determination by a lender that a loan is or has become a distressed loan, but no later than 45 days before an institution begins foreclosure proceedings, the lender shall provide written notice to the borrower that the loan may be suitable for restructuring and that the alternative to restructuring may be foreclosure, and include with such notice:

1. a copy of this restructuring policy;
2. the appropriate forms necessary to enable the borrower to submit an application for restructuring the loan; and
3. a statement that the lender shall provide a reasonable opportunity for the borrower to personally meet with a representative of the lender to review the status of the loan, the financial condition of the borrower, and the suitability of the loan for restructuring, if the borrower should so request.

APPLICATION PROCEDURES

The borrower shall have 45 days from notice by the lender (as specified above under Notice to Borrowers) to submit an application for restructuring. If the application is not received by the lender within that time period, the lender may initiate foreclosure proceedings and will have no obligation to consider an application once foreclosure proceedings have commenced. If there is more than one borrower, all borrowers must submit a joint application for restructuring in order for the application to be considered.

RESTRUCTURING CRITERIA

If a lender determines, in its sole discretion, that the potential cost to the lender of restructuring the distressed loan in accordance with a proposed restructuring plan is less than or equal to the potential cost of foreclosure, and it is probable that the plan will return the borrower to financial viability, the lender shall restructure the loan in accordance with the plan. The term "cost" as used herein includes all factors relevant to making a sound credit decision.

This policy shall not prevent a lender from proposing a restructuring plan for a borrower, but the lender is under no obligation to do so. A lender is not required to consider a distressed loan for restructuring unless the borrower submits an application for restructuring pursuant to this policy.

If two or more qualifying restructuring alternatives are available to a lender under this policy with respect to a distressed loan, one or more of which alternatives may be proposed by the lender, the lender shall restructure the loan in conformity with the alternative that results in the least cost to the lender.

NOTICE OF DECISION

The borrower's application for restructuring shall be processed and promptly acted upon in conformance with normal loan processing procedures. Upon taking action on an application for restructuring, the lender shall provide by certified mail or in any other manner that requires acknowledgment prompt written notice of its decision to the borrower, including the terms and conditions of the restructuring if approved, or the reasons for the denial and any critical assumptions and relevant information upon which the reasons are based except confidential information if the application is not approved. The notice shall also advise the borrower of his right to receive a review of an adverse decision as provided for herein.

REVIEW

A borrower who has received notice of a decision to deny an application for restructuring a distressed loan may request a review of such decision by the lender's credit review committee. Any request for review must be made in writing within seven days of the borrower receiving the lender's written notice of its denial of restructuring. The borrower may appear in person before the credit review committee, and may be accompanied by counsel or by any other representative of such person's choice, to seek a reversal of the decision on the application under review. The borrower may submit any relevant documents or other information to support the information in the restructuring application. Review by the credit review committee will be limited to the application, as supplemented by relevant documents or evidence supporting the information contained in the application. Documents or evidence containing new information that was not mentioned in the application may not be submitted by the applicant and will not be considered by the credit review committee in reviewing the application for restructuring.

A request for review filed with the credit review committee under this policy may include a request for an independent appraisal of the property securing the loan by an accredited appraiser. If such a request is made, within 30 days the borrower will be provided with a list of three appraisers approved by the lender from which the borrower shall select an appraiser to conduct the appraisal, the cost of which shall be borne by the borrower. The credit review committee shall consider the result of such appraisal in any final determination with respect to the application for restructuring. A copy of any appraisal made pursuant hereto shall be provided to the borrower and the credit review committee prior to the credit review committee meeting.

The credit review committee shall reach a decision on the application for restructuring in its sole discretion and such decision shall be the final decision of the lender with respect to restructuring on the loan. The credit review committee shall promptly notify the borrower in writing of the committee's decision and the reasons therefor.

EFFECT OF RESTRUCTURING ON BORROWER STOCK

If a lender forgives and writes off any of the principal outstanding on the loan made to any borrower in connection with restructuring of a loan pursuant to this policy, the system institution of which the borrower is a member and stockholder shall cancel the same dollar amount of borrower stock held by the borrower in respect to the loan at the time of the restructuring, up to the total amount of such stock. However, the borrower shall be entitled to retain at least one share of stock to maintain the borrower's membership and voting interest in the association.

PREVENTATIVE ACTIONS

Nothing contained in this policy shall be construed to prevent any lender from enforcing any contractual provisions that allow the lender to foreclose a loan, or from taking such other lawful action as the lender deems appropriate, if the lender has reasonable grounds to believe that the loan collateral will be destroyed, deteriorated, dissipated, consumed, spent, concealed, or permanently removed from the state in which the collateral is located.

EXHIBIT B

FARM CREDIT BANK OF TEXAS

SUMMARY OF DETAIL LOAN FILE REVIEW

Below is additional detail on the twenty distressed loans we reviewed in conjunction with Step 4 as outlined in our report. The results of our review are summarized in the Findings section of our report under Step 4.

Payment Received

1. The borrower has a good repayment history but is experiencing current financial difficulties. The borrower submitted a plan in September 1988 to pay his October 1988 installments on two loans. This called for a partial payment in October 1988 and monthly payments thereafter to repay the delinquency. Based on the level of the borrower's projected income, the Bank denied this plan but offered a counter proposal whereby the borrower would pay the total installment on one loan in October 1988 and pay a greater amount each month thereafter to repay the delinquency. The borrower accepted this plan and brought the loan current in December 1988.

2. Borrower has a history of delinquency. Borrower did not pay his installment due in October 1988 and requested forbearance until February 1989. Forbearance was denied and DLR was sent in December 1988. Borrower responded with a plan which called for the delinquent principal and interest to be added to the loan balance and reamortized over the remaining term of the loan. Borrower's sources of projected cash flow are from sales of real estate and real estate sales commissions. The Bank denied the plan in April 1989, based on prior years' losses and on the uncertainty of future cash flows. The borrower appealed but requested a postponement of the scheduled review committee meeting. The borrower paid the delinquency in full in June 1989.

3. The borrower has a recurring history of delinquency. A DLR was sent in February 1989. The borrower submitted a plan which called for monthly payments beginning in March 1989 to bring the loan current. The Bank offered a counter proposal which granted forbearance until May 1989 when the loan would be brought current. The borrower accepted this counter proposal and brought the loan current in May 1989.

4. This loan is a rural residence loan; however, the Bank has extended the same rights to this borrower as it extends to those covered by the 1987 Act. The borrower has been delinquent on several monthly installments due to serious illnesses in his family. Borrower is cooperating with the Bank and is making monthly payments on his loan, although he is three months behind. No formal plan has been approved or denied by the Bank as payments are being received and the borrower is being very cooperative with the Bank. No foreclosure proceedings have been initiated by the Bank.

5. Borrower has had a history of recurring delinquency. The borrower makes monthly payments and a DLR was sent in April 1988 when the loan became 30 days past due. Borrower did not respond to this or subsequent collection letters. Forbearance was granted because financial data previously submitted by the borrower indicated he would be able to service the debt. In August 1988, payment was promised by September 1988. No payment was received and another DLR was sent in October 1988. The borrower did not respond. The Bank gave the borrower additional weeks to present a restructure application; the loan was then paid current.

6. The borrower became delinquent on his February 1988 installment. The Bank granted forbearance until June 1988 to allow the borrower time to sell assets. As no payment was received, a DLR was sent to the borrower in July 1988. Forbearance was granted until August 1988 and the loan was then paid current. Borrower requested that his billing date be changed to June to correspond with his cash flow from operations. Borrower never signed documents to finalize the billing date change. The borrower became delinquent again in February 1989 and a DLR was sent in March 1989. A plan was not submitted by the borrower, however a partial payment was made in May 1989. Another DLR was mailed in late May 1989; no response has yet been received from the borrower.

Restructure Approved

7. Borrower had a strong financial history but was experiencing cash flow shortages due to a damaged crop. He repaid 1986 and 1987 delinquencies but was 60 days past due on February 1988 installment. A DLR was sent to the borrower in April 1988. The borrower's plan entailed adding the delinquency to the loan principal and reamortizing the total balance. The Bank considered the borrower to be viable based on cash flow projections and the prior year's income. As a result, the Bank approved the borrower's reamortization plan.

8. Borrower was delinquent in 1987 and on the 1988 installment. This was primarily a result of the borrower selling his business and not having a steady income. Forbearance had been granted and the borrower paid the 1987 installment. Forbearance was granted on his October 1988 payment until late January 1989. As no payment was received, a DLR was sent in February 1989. The borrower responded within two weeks with a plan which requested the reamortization of the delinquent installments. The Bank approved the plan in March 1989 because the borrower and his wife had both obtained jobs with steady incomes which would allow for the servicing of the debt.

9. Borrower became six months delinquent on his 1987 payment prior to paying the installment. The loan became past due again in February 1988. A DLR was sent to the borrower and a plan was submitted in September 1988. The plan requested that the loan balance plus the delinquent amount be reamortized over a 20 year period with annual payments due each February. Additionally, the borrower would assign 1989 income from a farming lease to the Bank to repay the 1988 delinquency. The Bank approved the plan because the farming lease would be a reliable source of income for the borrower in the future.

Restructure Denied

10. Borrower has a two-year history of delinquent payments. Additionally, he was delinquent on a significant amount of property taxes. Borrower missed his April 1988 payment and a DLR was sent in May 1988. Borrower submitted a plan for repayment which requested a lower interest rate, an additional advance to pay delinquent taxes, and a longer term. The Bank denied the borrower's plan because it would not return him to viability; the borrower appealed the denial but the original decision was affirmed. The Bank acquired the collateral through foreclosure proceedings.

11. Borrower has been delinquent since January 1987. Additionally, his 1986 installment was paid one year late. Borrower has been uncooperative with the FLBA and has made no effort to sell his property. Forbearance was granted until December 1987, however no action was taken by the borrower. Borrower has no short-term financing sources because he is delinquent on an FmHA loan and no further credit will be extended. A DLR was sent to the borrower in May 1988. Borrower submitted a plan which requested a reamortization of the loan for 20 years with the first payment due in January 1990. The borrower said he planned to buy more cattle and farm more land. The Bank denied the plan because it would not return the borrower to viability; Bank began foreclosure proceedings in September 1988.

12. Borrower has a history of delinquency and financial difficulties. Borrower is nonviable as he has no short-term financing for his crops and projected negative cash flow. Borrower did not make his November 1988 installment but was granted forbearance until December 1988. A DLR was sent to the borrower in November 1988; no plan had been submitted upon the expiration of 45 days, however, the FLBA offered the borrower an additional two weeks. No plan was received but forbearance was again granted until March 1989, to give the borrower a chance to sell his business and repay the loan. When forbearance expired, a sale had not been consummated and the Bank began foreclosure proceedings.

13. Borrower was delinquent on 1987 and 1988 payments. Additionally, forbearance had previously been granted for the 1986 installment. In December 1987, the Bank proposed a restructuring plan whereby a new loan would be extended to repay delinquencies in return for additional collateral, including the assignment of mineral rights to the Bank. The borrower rejected this plan. A DLR was sent to the borrower in July 1988. He responded in August 1988 with a plan which entailed freezing the amount of principal and interest due at that date for the next five years. During this period, he would make payments from whatever sources were available, which would be applied as interest during the period of forbearance. The Bank denied this plan because cash flow projections were optimistic given historical income trends and because the plan would not return the borrower to viability. The borrower appealed, however, the Bank upheld the original decision. Foreclosure has subsequently been postponed until July 1989 because the borrower is making small payments each month and is trying to obtain a letter of commitment from a commercial bank to finance his delinquency.

14. Borrower has a recurring history of delinquency. Forbearance was granted on 1987 and 1988 installments. In December 1988, the May 1988 installment had not been paid and a DLR was sent. The borrower submitted a plan in January 1989, which included deferring the delinquent 1988 installment and the 1989 installment to the end of the loan term. During the year of forbearance he would liquidate some assets, including a portion of the security, and try to make his oil and gas operations profitable. The Bank denied his plan because it would not return him to viability and because of his poor repayment history. The Bank granted forbearance until May 1989 to allow the borrower time to sell some of his assets and make the loan current. The borrower appealed the decision; the review committee hearing is scheduled for June 1989.

15. Borrower is experiencing financial difficulties as a result of a damaged crop. Borrower made a partial payment on his February 1989 installment and was given a DLR at that time to apply for restructuring. The borrower's plan was submitted within 15 days and indicated that he would repay the loan through hunting lease revenues, proceeds from the sale of property and anticipated funding from a disaster relief loan. The Bank denied his plan because the revenue sources are not guaranteed and it seemed unlikely that he could service all of his debt at his projected income level. The Bank did, however, grant the borrower forbearance until August 1989 to give the borrower a chance to sell the property and make the loan current. The borrower made an additional partial payment in March 1989.

16. The borrower had a recurring history of delinquency. In 1987, it became evident that the borrower's only option for repayment was to sell the collateral and as such the Bank granted forbearance until May 1988. The property was not sold during the forbearance period. The borrower declared bankruptcy in May 1988, however, the bankruptcy filing was not accepted by the court. A DLR was sent to the borrower who submitted a plan which requested a $1,000 per month payment schedule. This was denied by the Bank as this amount was inadequate to cover interest accruing on the loan and because the borrower was considered nonviable due to his weak financial condition. The property was acquired through foreclosure in December 1988.

17. The borrower has a recurring history of delinquency. Forbearance was granted for the 1987 and 1988 installments. A DLR was sent to the borrower in April 1988; no response was received from the borrower. Additional forbearance was granted until August 1988, when the Bank began negotiations with the borrower to accept a deed in lieu of foreclosure in full settlement of the debt. Negotiations continued until February 1989, when the property was acquired by the Bank through this means.

18. Borrower has a three-year history of delinquent payments. Although the loan related to a rural residence, a DLR was sent. Borrower's repayment plan requested reamortization over a longer period under the borrower's wife's name. The Bank denied this plan because the wife's financial resources were inadequate, however, the Bank made a counter proposal whereby reamortization would be granted if the wife's father and new husband co-signed the loan. The counter proposal was not fulfilled and the Bank acquired the collateral through foreclosure proceedings.

19. Borrower has a recurring history of delinquency. It is the Bank's belief that the borrower is not utilizing all sources of income to repay the loan. A plan was submitted by the borrower in August 1988 to reamortize the loan and defer the October 1988 payment. The Bank determined the borrower to be nonviable due to projected future negative cash flow and denied the reamortization plan. Borrower appealed the Bank's denial, however he could not show how he planned to service the reamortized debt thus the original decision was affirmed. Subsequently, the borrower has made partial payments toward the delinquency and foreclosure has been postponed.

20. Borrower has a recurring history of delinquency. In the past, the borrower has had several plans for restructure, some of which have been accepted and implemented and some of which have been denied. The borrower has always brought the loan current prior to foreclosure. A DLR was sent in August 1988. The borrower submitted a plan which included payment of the February 1988 installment and reamortizaton of the February 1989 installment. The borrower did not submit a cash flow analysis or income projections. This plan was denied in November 1988 because: 1) the plan would not return the borrower to viability; 2) the borrower is unwilling to liquidate other real estate holdings to service the debt; and 3) the borrower did not comply with provisions of a restructure plan he had submitted to a PCA. Another DLR was sent to the borrower in March 1989. No response has been received and foreclosure proceedings have begun.

EXHIBIT C

FARM CREDIT BANK OF TEXAS

SELECTION OF LOANS TRANSFERRED TO ACQUIRED PROPERTY

	Recovery Value (RV)	Principal and Interest (P&I)	Net Proceeds From Sale	Total Gain/ (Loss)	Net Proceeds As a % of RV	Net Proceeds As a % of P&I
Properties Acquired and Sold Prior to May 31, 1989:						
Property 1	$314,026	$ 263,921	$287,965*	$ 24,044	92%	109%
Property 2	45,000	42,814	49,997	7,183	111%	117%
Property 3	52,168	75,831	51,507	(24,324)	99%	68%
Property 4	166,948	161,982	170,798	8,816	102%	105%
Property 5	48,190	64,657	52,224	(12,433)	108%	81%
Property 6	168,484	243,358	173,500	(69,858)	103%	71%
Property 7	42,166	42,883	37,956	(4,927)	90%	89%
Property 8	147,788	145,136	111,140	(33,996)	75%	77%
	$984,770	$1,040,582	$935,087	($105,495)	95%	90%
Properties Acquired and On-Hand at May 31, 1989:						
Property 9	$140,000	$148,600				
Property 10	46,753	63,347				

* Contract is pending for this property, value represents contract price less actual expenses incurred to date and estimated closing costs.

PREPARED STATEMENT OF AL HASLEBACHER, PRESIDENT, SPOKANE DISTRICT FARM CREDIT COUNCIL, SPOKANE, WA

Mr. Chairman, members of the committee, I am Al Haslebacher, president of the Spokane District Farm Credit Council (SDFCC), a regional trade association composed of cooperative lenders in the 12th Farm Credit District. My board of directors is composed of representatives of the Farm Credit Bank of Spokane; the two districtwide associations, the Interstate Federal Land Bank Association and the Interstate Production Credit Association; local directors; and cooperative stockholders of the Bank for Cooperative system. We are pleased to participate in your hearing today to present an overview of the 12th District's implementation of the Agricultural Credit Act of 1987.

With me today is Fred Colver, a member of the Interstate FLBA Board of Directors who will amplify on the district's implementation of the borrower rights section of the act. As a stockholder/director who has participated in about 60 credit review committee hearings, he has excellent insight relative to the loan restructuring process. At the conclusion of his testimony, we would be pleased to answer any questions which you may have.

From my perspective as a trade association observer of Farm Credit operations, it is apparent to me that the 12th District's boards and management have gone beyond the letter of the law and have tried to fully comply with the spirit or intent of the 1987 act. For example, all collection actions were suspended from December 1987 to March 1988 pending passage of the act, issuance of preliminary FCA regulations and revision of policies and programs. In January of 1987, the 12th District bank and association boards of directors adopted new loan restructuring and acquired property policies, which are consistent with borrower rights provisions of the act.

During March and April of 1988, more than 2,500 borrowers with distressed loans (8 percent of the PCA and FLBA membership) were notified of their right to apply for loan restructuring with approximately 50 percent of the applications approved initially. To date over 3,600 borrower rights restructuring notification letters have been sent with approximately a 55 percent restructuring approval rate and a 15 percent outright rejection rate with the balance under consideration (see attachment 1).

The 12th District has also been one of the leaders in striving for efficiencies to better serve its member borrowers. It consolidated the management of the three Farm Credit Banks in January of 1985, a full 11 months prior to the Farm Credit Act of 1985. In October of that year, the 40 FLBA's merged into a districtwide FLBA and 21 PCA's merged into a near districtwide PCA. The management of the resulting Interstate PCA and FLBA were consolidated and duplicative offices closed and put up for sale. Management consolidation produced increased staffing efficiencies and the new Interstate association structure required less directors. Director and staff numbers decreased 29.8 percent from January of 1985 through May of 1987 (from 1,487 to 1,044) (see attachment 2) and field locations were decreased from 158 to 48.

Also, while the 12th District FICB and PCA's were early recipients of System self-help, the district entities as a whole were always cooperative and generous in assisting other troubled districts. The 12th District is a $55.5 million net contributor to FCS self-help efforts and on a cash basis was a $61.4 million net contributor (see attachment 3).

The 12th District has quickly responded to implement various provisions of the 1987 Agricultural Credit Act including:

- Adopted an affirmative action plan;
- Purchased $825,000 of stock in "Farmer Mac," the Federal Agricultural Mortgage Corporation;
- Merged the FLB and FICB of Spokane on 7-6-88;
- Conducted required stockholder votes on BC merger and on 11-14-88, stockholders approved merger of SBC into the National Bank for Cooperatives;
- Adopted interim bylaws on reduced capitalization in October 1988 and conducted stockholder vote on reduced capitalization requirements at May 1989 annual meetings. (Set 4 percent stock as maximum with 2 percent as the standard.)
- Submitted plan to regulator (FCA) for converting a portion of "protected stock" (5 percent to 10 percent) to "at risk" stock (2 percent) and refunding the balance to stockholders in cash or loan reduction;
- Submitted disclosure package to the regulator (FCA) regarding required vote of merging essentially contiguous PCA's and FLBA's;

- Started implementation of "outside director" section of 1987 act. The Interstate FLBA has completed this process and the IPCA and Farm Credit Bank Board are in the process;
- Seeks continuing increased operating efficiencies with such measures as the "Omaha alliance" joint ventures, affecting district data services and quality control;
- Added additional insurance carriers to comply with the provisions of the 1987 act.

While the 12th District has made substantial progress in its recovery and in loan restructuring, we still have a burdensome level of nonaccrual loans that is a major factor in the FLBA negative interest rate margin (see attachment 4). The other major factor is the high cost of debt. The Farm Credit Bank Board is acting on this problem area by applying for Federal assistance to buy back the outstanding high cost bonds to lower our average cost of debt.

The Farm Credit Bank Board continues to analyze organizational structure options including merger of the bank and/or associations in order to further reduce costs and streamline operations. We are gradually regaining the confidence of our member-borrowers and our board and management are fully committed to taking all actions that will restore the Farm Credit System in the 12th District to a position of premier agricultural lender with the best possible service to its member-borrowers. Director Fred Colver would now like to expand on our implementation of the borrower rights section of the act, and at the conclusion of his testimony we will be available to answer questions.

[Attachments 1-4 follow:]

[Attachment 1]

DISTRESSED LOAN ACTIVITY REPORT, 12TH DISTRICT FARM CREDIT BANK AS OF MARCH 31, 1989

	No. of distressed letters sent after Jan. 6, 1988	Volume	Restructure proposals returned	Percent of responses approved	Percent still under consideration	Percent rejected
Montana	1,024	$222,614,857	627	58	33	9
Washington	520	107,011,622	239	54	20	26
Idaho	969	159,241,522	524	56	29	15
Oregon	677	121,449,519	352	47	35	18
District	3,190	610,317,520	1,742	55	30	15

DISTRESSED LOAN ACTIVITY REPORT, 12TH DISTRICT INTERSTATE PRODUCTION CREDIT ASSOCIATION AS OF MARCH 31, 1989

	No. of distressed letters sent after Jan. 6, 1988	Volume	Restructure proposals returned	Percent of responses approved	Percent still under consideration	Percent rejected
Montana	134	$19,979,584	78	69	16	15
Washington	73	11,953,560	42	43	29	28
Idaho	86	12,377,173	52	61	31	8
Oregon	137	19,575,689	88	60	25	15
District	430	63,886,006	260	60	24	16

[Attachment 2]

12TH DISTRICT STATISTICS—EMPLOYEE COUNT

	Dec. 1984	Dec. 1985	Dec. 1986	Dec. 1987	Dec. 1988	May 1989
Full-time:						
Corporate headquarters	328	433	330	291	257	249
Field operations	633	536	536	511	502	484
EIPCA			44	43	36	34
PCA liquidations	29	44	48	29	1	0
Total	990	924	958	874	796	767
Part-time:						
Corporate headquarters	14	14	8	17	17	17
Field operations	97	63	93	59	58	53
EIPCA			3	3	4	6
PCA liquidations	1	4	2	3	0	1
Total	112	81	106	82	79	77

12TH DISTRICT STATISTICS—FIELD OPERATIONS

	Dec. 1984	Dec. 1986	Dec. 1987	Nov. 1988	May 1989
Field office locations [1]	158	79	58	54	48

[1] Includes all 12th District field offices, excluding liquidating PCA offices.

12TH DISTRICT STATISTICS—DIRECTORS

	Nov. 1984	Oct. 1985	Sept. 1986	May 1987	Nov. 1988 [1]	May 1989
District directors	7	7	7	7	5	5
Association directors	369	12	12	11	12	13
Associate directors		312	228	204	175	175
EIPCA directors	7	6	7	7	7	7
Total directors	385	337	254	229	199	200

[1] Excludes 3 directors from the Spokane Bank for Cooperatives.

[Attachment 3]

12TH FARM CREDIT DISTRICT—HISTORICAL PROFIT AND LOSS UNDER SYSTEM SELF-HELP (COMBINED FLB, FICB, AND RELATED ASSOCIATIONS)

Cash assistance received, 1985, to FICB/PCA's	$1,778,000
Cash assistance paid, 1985–1986 by FLB and BC	63,220,000
Net cash payments	61,442,000
Noncash benefits/penalties: [1]	
From Capital Corporation transactions, $137 million, interest free loan, benefit	13,742,000
From Capital Corporation, $40 million interest free investment by FLBA, penalty	7,889,000
Net benefit	5,853,000

12TH FARM CREDIT DISTRICT—HISTORICAL PROFIT AND LOSS UNDER SYSTEM SELF-HELP (COMBINED FLB, FICB, AND RELATED ASSOCIATIONS)—Continued

Total ***cost*** to district of self-help assistance given or received	55,589,000

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[1] The Capital Corporation transactions were repaid in full; so the benefit to the district was in having an interest-free loan. The investment ***in*** the Capital Corporation has been repaid, ***almost*** in full; so the penalty was lost interest.

AGRICULTURAL CREDIT ACT OF 1987 ASSISTANCE

In 1989, $10,404 (net after partial repayment) was received from the Financial Assistance Corporation to retire frozen B stock in four liquidated PCA's.

Net cost of System self-help	$55,589,000
Benefit from 1987 act	10,404,000
Net cost to 12th District to date of self-help and 1987 act assistance	45,185,000

[Attachment 4]

12TH DISTRICT LOAN VOLUME AND QUALITY STATISTICS—COMBINED BANK AND ASSOCIATIONS [1]

[In thousands of dollars]

Date	Gross loan volume	Accrual volume	Nonaccrual volume	Percent nonaccrual	Acquired property	Nonaccrual volume and acquired property
December 1984	$4,854,963	$4,655,047	$199,916	4.1	$37,914	$237,830
December 1985	4,231,390	3,820,575	410,815	9.7	68,569	479,384
December 1986	3,594,536	2,796,275	798,261	22.2	82,504	880,765
December 1987	3,059,046	2,526,555	532,491	17.4	52,759	585,250
December 1988	2,856,018	2,460,615	395,403	13.8	35,727	431,130

[1] Includes Federal Intermediate Credit Bank, Federal land bank (or Farm Credit bank after December 1987), Interstate Federal Land Bank Association, Interstate Production Credit Association, Eastern Idaho Production Credit Association and PCA's in liquidation.

PREPARED STATEMENT OF FRED COLVER, MEMBER OF THE INTERSTATE FEDERAL LAND BANK ASSOCIATION, 12TH FARM CREDIT DISTRICT, LEWISTOWN, MT

I come before you today representing the Farm Credit System's 12th District, headquartered in Spokane, Washington.

My name is Fred Colver, my home is in Lewistown, Montana, where, between my son and myself, we own and operate a 2,400 acre small grain, hay and cattle ranch. We also lease four other small neighboring farms. We run about 200 head of cows with one-half of them being a registered Gelbvieh herd that we sell through our own annual spring production sale.

I have been a borrower of Farm Credit for 30 years. I was a board member of the Federal land bank for 9 years through our local service center in Lewistown, Montana. At the present time, I am a member of the Interstate Federal Land Bank Board and have held that position for a year and a half.

Today, I would like to give you a little bit of history about Farm Credit and update you with our present role in dealing with Farm Credit borrowers.

Through the 1960's and 1970's, agriculture was on quite a roll. Production was above average, prices were good, and our costs of operation were reasonable. In 1960, I bought a neighboring farm. I gave $100 an acre for it and had it paid for within 10 years. In 1972, I bought another piece of ground that bordered our place for $225 an acre. I haven't gotten that paid for yet. The price of real estate was on an upswing. In 1980, I turned down an offer of $550 per acre for our ranch; I guess that was the case of two fools meeting.

About 1982 to 1983, a few indicators started to come into view. Some of the other Farm Credit districts, mainly in the South and Midwest, started to have problems with repayments to the point that their reserves were being depleted.

Being the cooperative that Farm Credit Services is, we in the 12th District were asked to help out financially and give support to the districts in trouble. We gave around $100 million at that time. In the West, we're always a little behind the economic changes. When our time came for infusion of moneys to aid us, there wasn't any left.

At the peak of our problems in 1986, we were carrying approximately $800 million in nonaccrual loans which amounted to 22 percent of our loan portfolio. If you put that money out at 10 percent interest—that amounted to about $80 million a year in interest alone that we weren't receiving.

At that time, we formed what we call the Special Credit Division. We took our best personnel and gave them the task of collecting these delinquent loans.

In December of 1987 when Congress passed the Agricultural Credit Act, new direction was given as to how we were to handle the many nonaccrual loans.

This established the borrower rights that we are operating under at the present time, and closely paralleled our district's restructuring policy already in effect. These borrowers' rights allow the borrower to meet with a committee, the majority of whom are his peers, if the loan officer and borrower cannot reach an acceptable settlement. That committee can review the information objectively and assure that the law and policy are being followed.

The borrowers usually have a negotiator with them, an attorney and sometimes an accountant and bookkeeper.

From January 1, 1988 to October 14, 1988, I participated in about 60 of these reviews in eastern Montana. Since October 14, our regulator, the FCA, determined that a board member from the prime lender, which is the Farm Credit Bank Board, had to sit on the committee instead of Interstate Directors such as myself.

During that time I can personally say our credit officers have bent over backward to accommodate these individuals in restructuring their loans. These loans are restructured with three main things in mind. Repayment must be feasible from a cash-flow standpoint; our stockholders are to be protected from further loss exposure; and the restructuring plan is the least-cost alternative. After all, at the present time, we still have over 90 percent of our borrowers that have good viable loans and are paying our going rate of interest. We have to protect them also. When I mentioned least cost, if we have to get into litigation (foreclosure), this can cost our stockholders if we have an undersecured loan. It then makes sense to restructure, with a cash payment up front or additional collateral, at an amount with a net present value greater than the litigation alternative. Also, we expect to then have a paying, viable loan.

One of the problems we have with the restructuring of these loans is that sometimes the individual loves to go back to his neighbors and tell them how he took Farm Credit to the cleaners. We have forgiven part of the loan, reamortized the rest and given the individual a 3- to 5-year loan at 8 percent, and then it will return to a normal rate of interest for the remaining term of the loan. His neighbor, who is also our borrower, will come to our local service center and tell us to give him a chance at that place with the going rate of interest, and he'll make it pay off. I'm sure that this neighbor could get that done because he has been a good manager and has held his own place together through these tough times. I don't mean to imply that all the loans restructured were individuals that weren't good managers. A good percentage of the loans, especially from eastern Montana which I'm most familiar with, were involved with circumstances beyond their control, such as a 3- to 4-year drought with grasshoppers taking anything that was left. I feel sorry for these people and will try to help them as much as possible.

When I mention 1 percent, this means that 99 percent of the individuals we work with are cooperative and would like nothing better than to get out of the predicament they're in or pay their loan as agreed. We will work with these people as much as we can.

We have been working with our troubled accounts. I would like to give you a few figures on our progress with these restructured loans.

Our restructured loans that have been approved on the FLB side since 1987 total 1,086 loans for a volume amount of $323.5 million with a compromise of about $84 million.

On the PCA side, which is our short term credit, since 1987, 202 loans with a volume of about $50.2 million and a compromise amount of $15.3 million have been approved. The compromises have been averaging 25–30 percent of the total volume in order to make the loans viable.

Regrettably, we must face the fact that there are a few borrowers who have deteriorated financially to a point where they cannot continue in farming. Neither our paying stockholders nor the taxpayer should be expected to run a benevolent operation to finance those few borrowers who take advantage of their organization or who do not honor the intent of the law. As I stated earlier this is a very small percentage of our borrowers, probably about 1 percent but the very vocal ones which Congressmen hear from. We truly want and expect to work with and restructure troubled loans when it is in the best interest of all parties involved. The present law provides very good direction to assure fairness and consistency in restructuring loans. Our district goes the extra mile to assure that the law and the intent of Congress is followed.

I believe that Attachment 1 to SDFCC president Al Haslebacher's testimony is strong evidence that the 12th District is doing an excellent job in the loan restructuring area. Another measure of the continual progress in this area is the large decrease in congressional inquiries on behalf of borrowers—dropping from 157 in 1988 to only 18 through June 15 of this year.

It is important that I fulfill my fiduciary responsibilities to all stockholders by seeing that our staff adheres to the "least-cost" approach to restructuring. I can assure you that I and my fellow directors take this responsibility seriously and are doing all in our power to comply with the intent of Congress and serve the best interest of our member-borrower.

Thank you for the opportunity to appear before you today.

DAKOTA RURAL ACTION

Dakota Rural Action,
Brookings, SD, June 19, 1989.

Honorable Tom Daschle,
U.S. Senate, Washington, DC.

Dear Senator Daschle: This letter is being written on behalf of Dakota Rural Action (DRA), a grassroots citizens organization of rural people working for fair agricultural, natural resource and economic development policies. Please submit this into the record of the Farm Credit System oversight hearing, which is being held today before the Senate Agriculture Credit Subcommittee.

Dakota Rural Action members who are borrowers of the Farm Credit System have identified three main areas of concern relating to the System's implementation of the Agricultural Credit Act of 1987, and the Disaster Assistance Act of 1988.

1. The Farm Credit System does not make restructuring or forbearance available to borrowers who are current on their loans, but soon to become delinquent without some form of forbearance. The System is not carrying out the forbearance policies in the Disaster Assistance Act of 1988.

Because of FCS's narrow interpretation of the Credit Act, a borrower must be delinquent before they are able to apply for and receive any type of interest rate reduction, reamortization or rescheduling. DRA has a number of examples where borrowers have asked to negotiate payments that are too high for the borrower to pay, but FCS is unwilling to negotiate. In one case, FCS told the borrower that they would reduce his interest, which was over 14 percent, to 10 percent. They did this for 2 months, then raised the interest back up.

In some cases, FCS has payment assignments, such as dairy assignments. Dairy producers who are feeling the impact of the drought this year have to buy feed because they had no harvest last year, and the feed costs are high because of the drought as well. One dairy farmer reported a 70 percent increase in operating costs this spring, but FCS has refused to reduce the milk assignment so that the farmer can pay feed and electricity bills. Like many other dairy farmers, this FCS borrower has no feed stocks onhand, and so his operating costs are much higher than normal. Right now, his income from the milk check is below half of what the actual assignment is.

In these instances, FCS is effectively starving borrowers out, because they are refusing to release income to cover essential farm operating and family living expenses. FCS has interpreted the term "distressed borrower" so narrowly that a borrower must be delinquent and facing foreclosure before the system will making any debt payment adjustment. In the end, dairy farmers are forced to sell off their cows to pay their bills.

This appears to violate the 1987 Credit Act. And it also is counter to the requirement in the 1988 Disaster Assistance Act which says that the Farm Credit Administration, in its oversight of FCS should:

(A) Ensure that FCS institutions exercise forbearance in the collection of principal and interest on loans outstanding to farmers and ranchers who have suffered major losses due to drought;

(B) Use restructuring and other mechanisms offered under the Credit Act to help drought affected producers; and

(C) Encourage other lenders who participate in loans with FCS to exercise forbearance before declaring the loans in default.

To our knowledge, in South Dakota, FCS is not exercising forbearance due to the drought, and the System is not negotiating debt with borrowers unless the borrower is delinquent and FCS intends to foreclose.

This is a problem of the System and the Farm Credit Administration, because both have chosen not to implement the intent of the 1987 Credit Act, or the 1988 Disaster law. It is also a reflection of the poor, loose wording of the debt restructuring and borrowers' rights provisions of the Agricultural Credit Act, which leave too much room for discretion. For examples, we refer to the May 15, 1989 letter from the Farmers' Legal Action Group (FLAG) to Senator Conrad, subcommittee chairperson.

DRA agrees wholeheartedly with FLAG's recommendations for corrections in the Credit Act so that there is no room for System interpretation about whether they should or should not restructure when this is cheaper than the cost of foreclosure. We have seen examples where the Omaha District in South Dakota does not do this, and as a result, it costs the System stockholders and the taxpayers more than if the System simply followed the intent of the Credit Act.

We recommend that FCS:

(A) Report to Congress the manner in which they have implemented the provisions of last year's disaster law.

(B) Prepare procedures for how System institutions will carry out the forbearance policy written in the Disaster Assistance Act of 1987, or explain in writing why they have not done this.

(C) Prepare written procedures for handling requests for restructuring—beyond the restatement of the Credit Act, which was printed in last year's FCS newsletters. The procedures should include steps for borrowers to take who are not yet delinquent, but who need some form of loan servicing to keep from becoming delinquent. Restatement of the Credit Act is not the same as clear, specific procedures for restructuring, but FCS had not yet put together clear procedures for debt restructuring and forbearance.

(D) Immediately respond to the requests of borrowers for forbearance, particularly those who have suffered major losses from the drought.

2. The Farm Credit System refuses to release stockholder lists when stockholders request them, in writing.

In one case, an FCS stockholder submitted a written request for the stockholder list, in which he said that he wanted to communicate with other stockholders about high interest rates and the debt restructuring policies. The local loan officer at first refused to acknowledge the request until the stockholder asked for the help of Senator Daschle. Despite numerous requests, FCS has still refused to turn this over to the borrower, who is the owner and stockholder. Indeed, the borrower should have more right to the stockholder list than the paid staff who are refusing access to the list.

The law requires FCS to make stockholder lists available at the request of stockholders, and the regulations go on to say that this is to be done when the borrower wants to discuss FCS business. What more legitimate business discussion among stockholders could there be than discussion of interest rates and debt restructuring? DRA believes that FCS staff people are afraid of how stockholders will use the list, and are avoiding scrutiny of their poor implementation of the Credit Act.

We recommend that:

(A) FCS interpretation of the regulations dealing with release of stockholder lists be clarified to spell out that borrowers who ask for stockholders lists to discuss debt restructuring and interest rates with fellow stockholders are legitimate grounds for release of stockholders lists.

(B) FCS immediately release stockholder lists to those stockholders who submit this request in writing. DRA has previously provided documentation to Senator Daschle from one stockholder who submitted a request for a stockholder list that was denied without any explanation, and it is clear that the Omaha district is violating the law by preventing stockholders access to the list.

3. FCS interest rates have not gone down in South Dakota in any substantial way. Yet consolidation of the System was supposed to result in lower interest rates to stockholders. When, and by how much, will interest rates be reduced to FCS borrowers?

The Credit Act requires that FCS report to Congress on the savings to borrowers that have been realized as a result of the Credit Act. We have not seen any sort of report. In fact, our members report that FCS interest rates have gone up, not down.

Borrowers who are most strapped within FCS pay the highest interest rates, which means that this increases their chances of failure. Failure costs FCS more money in the vast majority of cases. In one case, a farmer was told that he would receive an interest rate reduction to 10 percent. He did, for 2 months, and the interest is back up on his loan to 11.85 percent. Last week he got a notice saying that his interest was going back down to 11.8 percent. In his case, reduced interest would mean the difference between being able to make his payments, or defaulting. Like many borrowers, this person is subject to variable interest rates, over which he has no control. DRA opposes FCS's variable interest rates, which hurt the low income borrower more than the wealthy farm borrower.

We recommend that FCS:

(A) Report to Congress on the savings realized to FCS borrowers as a result of the restructuring of the System, required by the 1987 Credit Act. We would like this report to include a description of actual interest rate changes over the last few years, and a calculation of total dollars saved to stockholders in reduced interest rates, as a result of the restructuring of the System.

(B) Justify its continued use of variable interest rates, in terms of increased revenue to the System, and a demonstration of how higher interest rates to lower income borrowers help keep them solvent.

We ask that FCS respond to the concerns that we have outlined in this letter, and that the System and the Farm Credit Administration make every attempt to implement the Agricultural Credit Act of 1987 and the Disaster Assistance Act of 1988 immediately.

Thank you.

Sincerely,

THERESA M. KEAVENY,
Staff Director.

PREPARED STATEMENT OF CHARLES W. EWING, LAWYER, COLUMBUS, OH

My name is Charles William Ewing. I am a lawyer in Columbus, Ohio with a substantial part of my practice devoted to seeking reorganization relief for farmers throughout Ohio. We presently represent several hundred farmers in various stages of reorganization including Chapter 11 and 12 Bankruptcy, and Farmers Home Administration (FmHA) and Farm Credit Bank (FCB) negotiations. I wish to add my wholehearted concurrence to thecomments made by the Farmers' Legal Action Group, Inc. (FLAG), James Massey, attorney and executive director, on March 15, 1989, and May 3, 1989, regarding the Agricultural Credit Act of 1987 (the act).

In addition I would like to emphasize the importance of being able to sue under the act. Perhaps more importantly in practice is the right to interpose the defense of failure to follow the act to combat litigation (usually foreclosure) by the FCB. In my practice this litigation is done almost entirely in State court. Although I believe the act contemplates a private right to pursue such remedy, in practice a great amount of time and legal effort is being spent convincing the State court judge that the act creates a private remedy available to the farmer. It is also important as a matter of judicial economy as well as overall legal expense to the farmer, to allow the defense to be brought in State court. Almost all of my clients are not able to pay any legal bills, let alone costs which would not be necessary if the legislation clearly allowed the right to sue or defend, and if jurisdiction were concurrent in State and Federal courts.

FARM CREDIT BANK

Case 1.—The farmers were in bankruptcy, but there was a Lift of Stay which allowed FCB to continue their collection efforts. There had been a prior decree in the foreclosure process. FCB took the position that since there had been a decree before the act was in effect, they need not consider restructuring. The court agreed and a sale took place. The farm had been in the family well over 100 years.

Case 2.—A public auction was held; my client did not wish to match the highest bidder. (He was willing to match the bid at $500 less than the highest bid which was the last previous bid.) The high bidder could not perform on his bid; my client heard about the failure of the highest bidder and requested the right to match the next highest bid. FCB refused, and allowed the second highest bidder to "take the place of" the next highest bidder and purchase the property.

Case 3.—A former borrower had liquidated his entire farm and collateral. FCB took judgment on their note and is now garnishing the former farmer's wages. When notified of the debtor's belief that he was entitled to certain rights under the act, FCB disagreed and continues to seek to garnish wages.

Case 4.—My client filled out completely the forms which FCB provided to them. They delivered the forms shortly after 4 p.m. on the 45th day after receiving their notice from FCB. They were advised that they had not provided information regarding a fourth year's history and thus had forfeited their rights under the act (although there was no place on the form for this information). Shortly thereafter a letter was sent to the farmers telling them they could bring their information in within 2 days. It is not clear when the farmer got their letter, but my office did not receive our copy from FCB until after the "deadline."

Later a letter was sent which said in effect "although you have forfeited your rights under the act, we might still listen to your proposal, but there will be no right to appeal any decision." I advised my client that under those conditions I did not think it proper to submit to any voluntary acts which might be construed to be in agreement with the thought that my client had forfeited any rights. To date, my clients owe me for two (2) 75-mile trips to a court several counties from my office, as well as for a brief, which is being completed, showing the error of FCB. The ironic point in this case is that the client only wanted to reamortize their debt and offered to pay the first payment in advance. The property is worth a substantial amount more than the mortgage balance. FCB has no risk, but has put my client to great stress and expense by mocking the intent of the act, if not the letter.

Case 5.—FCB denied the farmers' request for restructuring after an agreement was reached in principle in bankruptcy court and the farmers voluntarily dismissed their bankruptcy. They then settled with their other major creditor and sought to finalize their settlement with FCB. FCB demanded that they begin an entirely new procedure and make a new request. The farmers filled out their sheets and submitted them timely. FCB denied restructuring demanding to receive any benefits that the farmer may have received due to the settlement with the other creditor. Part of the reasoning used in denying the request was a legal conclusion regarding security agreements in the State of Ohio.

When the appeal was heard it was obvious that the legal conclusion was ridiculous and wrong. The appeal was then denied on other reasons. The farmers have defended the foreclosure actions by stating that the act was not followed or followed wrongly. FCB firmly states that there is no private right to action under the act and that the farmer has no rights beyond the Credit Review Committee review.

FARMERS HOME ADMINISTRATION

There are many cases in progress which are still in the first stages and it is premature to comment on specific cases. FmHA seems to be trying to implement the act, however, I would like to reinforce and add to the comments of FLAG regarding the various issues.

*DALR$.*—With the growth of small computers a substantial number of law office and consulting offices have access to their own computers. UNIX is not a popular operating system and is prohibitive to scrap the existing equipment. DALR$ should be made available on MS-DOS or at least on readily available and economical systems. General availability would greatly speed up the process and allow for more reasonable planning.

Rigid budget or forecasting requirements.—FmHA is trying to budget for income in 1994. Based on what I have seen so far, according to their budgets, no one will make a profit in 1994. This would effectively preclude any restructuring. To date, the only offers have been Net Recovery Buyout. Budget expectations cannot be arbitrarily chosen for 1994; it is difficult enough to predict what will happen in July 1989, let alone being arbitrary and rigid about 1994.

Guaranteed loans—not reliable for relief.—I have at least one instance where the lender and FmHA refused to consider any relief due to the guaranty relationship with FmHA and the bank. This case then went into a Chapter 12 and was very successful for the farmer. The bank and FmHA received a substantial amount less than the farmer could have paid without a bankruptcy. The legal fees amounted to approximately $12,000. While this type loan is not immediately a problem in my practice, I believe it will soon be because there were more guaranteed loans issued recently.

CONCLUSION

The problems with FCB and FmHA are real, but there is a distinct difference in my view. FmHA suffers from being such a large direct Government agency charged with the responsibility of being the "lender of last resort." Some of their practices have bordered on ridiculous, but I do not feel there has been any serious "excesses" practiced by any FmHA personnel. In fact one comment made by the Ohio Farm Alliance (OFA) in their May 9, 1989 testimony concerns me. I have worked with David Drake (director of farmer programs for the State of Ohio) and his wife, Dora Drake (County Supervisor of Muskingum County, Ohio). Although I don't think that OFA meant to imply any wrongdoing, I want to be on record as saying that although I sometimes disagree with both David and Dora Drake, I do not believe their marital relationship has any effect upon their work or their effectiveness. I would be greatly disappointed to see either one of them suffer because of any misconstruing of OFA's comments. I generally support the other comments and do not disagree with OFA on the rest of their statement.

FCB on the other hand, a "quasi-Federal instrumentality" (whatever fiction that is) has been guilty of greedy, slovenly, and nearly criminal conduct, in my opinion. This is the group that in the seventies would not loan on a tractor which was not new. Farmers were encouraged to borrow extensively to put in capital improvements, but were denied money to operate the facilities, then branded unfit managers when they could not make payments. Although I do not have any direct evidence, only hearsay, this group compensated employees who made large volumes of loans in the seventies and then compensated employees who did the most collecting in the eighties. Is it any wonder there has been so much heartache caused by this group with "incentives" such as this? Even though I have no proof of why there have been excesses, the above explanation is plausible from my eyes.

This is also the group which invested heavily in long-term bonds with monster interest rates and made their "members" pay the price by attempting to pass-through the huge costs to the borrowers. Needless to say, this process helped untold numbers of farmers into the bankruptcy courts and impacted heavily upon FCB. Now, after Congress bailed this bumbling quasi-bureaucracy out despite its "shoot itself in the foot" activities, FCB refuses to abide by the rules set by Congress. It is my fervent hope that Congress will hold FCB's hand to the fire and force FCB to implement the act to its intended purpose. I believe that the right to private litigation, clearly spelled out, will be the most effective insurance Congress can get.

EDITOR'S NOTE.—Pages 1211–1218 should insert here as part of the June 19, 1989 hearing, With Respect to Borrowers' Rights in Restructuring Provisions.

OVERSIGHT ON THE IMPLEMENTATION OF THE AGRICULTURAL CREDIT ACT OF 1987

With Respect to Farmers Home Administration Borrowers

TUESDAY, AUGUST 1, 1989

U.S. Senate,
Subcommittee on Agricultural Credit of the
Committee on Agriculture, Nutrition, and Forestry,
Washington, DC.

The committee met, pursuant to notice, at 2:36 p.m., in room SR-332, Russell Senate Office Building, Hon. Kent Conrad (chairman of the subcommittee) presiding.

Present or submitting a statement: Senators Conrad and Daschle.

OPENING STATEMENT OF HON. KENT CONRAD, A U.S. SENATOR FROM NORTH DAKOTA

Senator Conrad. This hearing before the Subcommittee on Agricultural Credit of the Senate Committee on Agriculture, Nutrition, and Forestry will come to order.

In the interest of time, I will put my opening statement into the record.

[The prepared statement of Senator Conrad follows:]

Prepared Statement of Hon. Kent Conrad, a U.S. Senator From North Dakota

Good afternoon. I would like to welcome all of you to this Subcommittee hearing to review the implementation of the Agricultural Credit Act of 1987 by the Farmers Home Administration.

This is the third oversight hearing of the Subcommittee on FmHA's implementation of this landmark, but complex legislation. The purpose of the act is to require FmHA to restructure delinquent borrowers when the cost of restructuring is less than the cost of foreclosure to the Government.

We have uncovered and discussed numerous implementation problems over the past months. I believe that FmHA has listened to our concerns, and I commend it for the action it has taken to resolve many of them.

Today we will again raise a number of issues, some new, some revisited. I hope that the witnesses will feel free to raise their own concerns about the act or the restructuring and appeals process. As was the case with many of the issues raised in our previous hearings, I believe many can be resolved by increased communication and flexibility by FmHA.

Several issues stand out as very important to me. First, while FmHA has improved the implementation of the act, and in some cases sent additional instructions to State, district and county offices to clarify aspects of the restructuring process, I still hear disturbing reports of unchanged and inflexible behavior in some of these offices. For example, we have agreed that County Supervisors will rerun the DALR$ program as necessary to correct efforts or to reflect changes in the Farm and Home Plan made to improve cash-flow ability. In addition, FmHA agreed to instruct county offices to fully participate in mediation. However, these changes in behavior have not occurred in every county.

It is imperative that FmHA employees and the public be fully informed of the improvements in FmHA's implementation process. I believe a two step education process would provide this information. First, additional training is clearly needed for the State, district and county FmHA staff, and County Committees. A very appropriate time to conduct this training would be upon the publication of final regulations in September. I would also like to discuss with the first witness, Mr. Johnson, the possibility of opening these training sessions to the public, including borrowers and the individuals who work with borrowers.

In addition, I urge FmHA to prepare a list of frequently asked questions and answers to include with the notice of the availability of loan servicing packets to be sent to delinquent borrowers. It is particularly important that this next group of borrowers who are 180-days delinquent be informed of the improvements in the process. This group will for the most part be borrowers who are still farming and have a good chance of being restructured. I do not want misinformation based on past implementation problems to discourage these borrowers from requesting restructuring.

A second issue which concerns me is the implementation of the rulings of the National Appeals Staff. Media reports from Texas about efforts to impede implementation provide a good example of the problems that are arising as the appeals staff overturns FmHA decisions. The unwillingness of FmHA staff to abide by appeals officers' decisions cannot be tolerated. I will appreciate the comments of Ms. Dillon, our second witness, and Mr. Johnson, on what FmHA is doing to resolve this serious problem.

The third issue which continues to disturb me is the number of borrowers who do not qualify for restructuring and are offered net recovery buyouts. A number of these borrowers cannot find financing to buyout their loan even at its net recovery value. In effect, for those borrowers, the act has provided no relief. I look forward to talking with Mr. Johnson about the factors which lead to buyout offers.

I want to thank the witnesses for being here today. I hope that we will have an open and productive discussion. Let us begin.

Senator CONRAD. We will call Neal Sox Johnson, the Acting Administrator of the Farmers Home Administration, and Pamela Dillon, the Director of the National Appeals Staff, to the table. First we will hear from Mr. Johnson and then we will hear from Ms. Dillon.

Please, if you will, come and take your positions. We will, as always, follow the general rules of the subcommittee. Your full prepared statements will be entered into the record as if given in full. If you would choose to summarize them, that is fine. If you choose to deliver them in full at this point, that is fine as well.

Mr. JOHNSON. Mr. Chairman, I did bring with me also Jack Hertzler, our Assistant Administrator for Farmer Programs. He is here in the event I need to make reference or you want to ask him questions, and also Mark Boster, who is our Assistant Administrator for Automated Information Services, since I know you wanted to talk about our automation efforts.

Senator CONRAD. Welcome to both of them as well. It's good to have you here.

Mr. JOHNSON. All right, sir. We are ready to proceed with my opening statement. Are you ready, sir?

Senator CONRAD. Good. Let's proceed.

STATEMENT OF NEAL SOX JOHNSON, ACTING ADMINISTRATOR, FARMERS HOME ADMINISTRATION, U.S. DEPARTMENT OF AGRICULTURE, WASHINGTON, DC; ACCOMPANIED BY GLENN J. HERTZLER, ASSISTANT ADMINISTRATOR FOR FARMER PROGRAMS, AND MARK BOSTER, ASSISTANT ADMINISTRATOR, AUTOMATED INFORMATION SERVICES

Mr. JOHNSON. All right, sir.

Thank you, and good afternoon, Mr. Chairman and members of the committee. I appreciate this opportunity to be here today to report to you on our most recent progress in carrying out the Agricultural Credit Act of 1987.

DEBT RESTRUCTURING IS CONTINUING

Debt restructuring is continuing. Most pending cases are in the final stages where borrowers are attempting to arrange financing for net recovery buyouts, where mediation is underway, appeals have been filed, or borrowers have filed bankruptcy.

SURVEY OF OUR FIELD OFFICES

In my last appearance here, my report was based on a survey of our field offices as of April 24. We have updated some of those figures with a survey as of July 7.

WRITE-DOWNS AND BUYOUTS

The April survey showed 3,166 borrowers had qualified for write-downs totaling $511.6 million. By the July survey, those totals had risen to 4,030 borrowers qualifying for $665.2 million in write-downs.

Buyouts at net recovery value in April had been approved for 2,057 borrowers for a total of $408.3 million. By July, that had changed to 3,486 borrowers totaling $706.4 million.

In April, the average write-down was $161,605; in July, it was $165,068. For buyouts, the April average was $239,343; by July, it was $202,819.

It is worth nothing that buyouts by July exceeded write-downs by a substantial margin—the opposite of the April results. And more than 11,000 borrowers eligible for buyout have yet to let us know their decisions, or to have their choices carried out.

INDUCEMENTS IN THE STATUTE THAT MAKE THE BUYOUTS ATTRACTIVE FINANCIALLY TO SOME BORROWERS

I remember that you expressed an interest at the last hearing, Mr. Chairman, in the extent of our buyout activity. Frankly, we do not know what the final results will be, but we do know there are inducements in the statute that make the buyouts attractive financially to some borrowers.

For instance, the recapture period for buyouts is only 2 years compared to 10 years for a write-down, and the potential recapture of appreciation is less for buyouts than for write-downs. And there is no prohibition against selling property for the same price as the buyout price—and on the same day at that. The potential for "sweetheart" deals is real under those circumstances.

SUBMITTED DRAFT LEGISLATION TO DEAL WITH THIS PROBLEM

We have submitted draft legislation to deal with this problem, Mr. Chairman, and we trust you will consider it favorably.

ANOTHER PROBLEM WITH THE BUYOUT PROVISION

Another problem with the buyout provision is that borrowers who have not acted in good faith—such as those who convert security property—are still eligible for the buyout option even though the statute makes them ineligible for write-downs. This actually encourages conversion.

We have been required to offer buyouts to borrowers who have failed to deal with us in good faith—even though we could legally suspend action on their request if a judicial proceeding was under way—and some U.S. attorneys have been reluctant to prosecute such cases.

This is a problem that has been identified and called to our attention by the Office of Inspector General, and, with the encouragement of the Inspector General, we are seeking to remedy.

WE ARE DEVELOPING LEGISLATIVE LANGUAGE

As a matter of information, we are developing legislative language to address this and other deficiencies that have developed in the Ag Credit Act. Once we have completed drafting and have made the final decisions on that language, we will be sharing it with the committee.

FIVE STATES WITH THE MOST WRITE-DOWNS

The July survey shows that five States with the most write-downs, by dollar amounts, are: Oklahoma, with $54.7 million; Mississippi, $43.2 million; Louisiana, $43.1 million; Minnesota, $37.6 million; and North Dakota, $35.9 million.

BUYOUTS—STATES WITH THE HIGHEST VOLUME

In buyouts, the States with the highest volume are: Louisiana, with $107.8 million; Minnesota, $52.1 million; Arkansas, $51.8 million; Michigan, $46.9 million; and Mississippi, $41.6 million.

CHART SHOWING WRITE-DOWNS AND BUYOUTS

I am submitting for the record a chart showing, by State, the statistics for write-downs and buyouts in terms of numbers of borrowers, dollar amounts, and loan sizes. There are some differences here and there between these numbers and those submitted at the last hearing because of misunderstandings or misinterpretation of survey instructions and so on. One State, for instance, in April reported write-down and buyout "offers" that had been made instead of those that had actually been accepted. Obviously, that would make a difference.

NOTIFY THE INTERNAL REVENUE SERVICE, AS REQUIRED BY THE TREASURY, WHEN DEBT FORGIVENESS IS EXTENDED BY WRITE-DOWN OR BUYOUT

This appears to be an appropriate point, Mr. Chairman, to let the committee know formally that we intend to notify the Internal Revenue Service, as required by the Treasury, when debt forgiveness is extended by write-down or buyout. This will be done by use of the Form 1099-G, Miscellaneous Income Report.

UP TO DATE ON THE FIRST PHASE OF SERVICING UNDER THE AG CREDIT ACT

That brings us up to date on the first phase of servicing under the Ag Credit Act. Because of the time involved, in borrower decisions, appeals, mediation, and various legal proceedings, we cannot say just when we will be able to make a final report on that phase.

SECOND PHASE

We will go ahead, however, with the second phase with the mailing of notices by September to borrowers who are 180 days delinquent. It is difficult to say at this time just how many that will be. Early this year, we had 37,000 newly delinquent borrowers—those with payments 180 days overdue. But, as you know, most of our farm loan payments are due in January, so the early year delinquencies are always the highest.

LESS DELINQUENCY

For instance, by July, those 37,000 delinquencies had fallen to 15,700 as payments were made and entered into the FmHA accounting system. So, while we do not know what the number will be at the time of the next mailing, we do know it will be smaller than 15,700 as we continue to receive payments.

HANDLE THE NEXT ROUND OF SERVICING UNDER THE EXISTING INTERIM REGULATIONS PUBLISHED LAST SEPTEMBER

We will have to handle the next round of servicing under the existing interim regulations published last September. In addition, we will be letting the borrowers know of our rule-of-reason time extensions permitting them more time to assemble backup documentation. Our current plans are to mail letters to delinquent borrowers by September 1.

FINAL REGULATIONS ARE EXPECTED TO BE PUBLISHED TO BE EFFECTIVE ON FEBRUARY 1

The final regulations are expected to be published to be effective on February 1. That would let us have the full benefit of what we have learned applied uniformly for both servicing phases, and then use that knowledge in preparing for the final regulations.

WE ARE REVISING AND UPDATING THE COMPUTER PROGRAM KNOWN AS DALR$

In preparation for this round of servicing, we are revising and updating the computer program known as DALR$, or Debt and

Loan Restructuring System. Basically, we are making modifications to make the system more responsive to the borrower's needs. For example, the new version will tell the borrower exactly how short the financial plan may be in terms of cash-flow and qualifying for restructuring.

We are testing this new software now and hope to have it in place in time for the second phase of servicing. We believe the modifications being made will result in a lot fewer questions being raised about the operation and objectives of DALR$.

WE RECENTLY ISSUED GUIDELINES TO OUR FIELD OFFICES ON REVISING FARM AND HOME PLANS BEFORE RUNNING THE DALR$ PROGRAM

Incidentally—on another point in which you have expressed an interest—we recently issued guidelines to our field offices on revising Farm and Home Plans before running the DALR$ program.

In Administrative Notice No. 1949, dated July 6, we made clear that the borrower must be advised of all revisions made to the plan and that any revisions must be clearly marked as such. I believe you received a draft copy of that notice, but I am submitting a copy of the final version for the record.

Mr. Chairman, we recognize and concur with your desire to make more information available to borrowers, and to that extent, the next revision of DALR$ will enable us to tell each borrower who does not qualify for restructuring exactly how short he or she is from cash-flow.

MAY REQUEST A MEETING WITH THE COUNTY SUPERVISOR

Borrowers will also be advised that they may request a meeting with the County Supervisor. In this way, the borrower can make appropriate revisions to his or her Farm and Home Plan and request a second run of DALR$ that, hopefully, will qualify him or her for restructuring.

CONSIDERING A SERIES OF BORROWER MEETINGS TO BETTER EXPLAIN DALR$

We also are considering a series of borrower meetings to better explain DALR$ and perhaps take some of the mystery out of it. We will also describe just how they can ask that DALR$ be rerun to take into account changes made in their Farm and Home Plans.

MAY MAKE DALR$ AVAILABLE IN A FORM THAT WOULD RUN ON MORE SYSTEMS

A little farther down the road, we may—and I emphasize may—be able to make DALR$ available in a form that would run on more systems, including the one known as DOS, which is used on most personal computers. As you know, DALR$ was developed to run on FmHA's standard UNIX operating system adopted 5 or 6 years ago when FmHA's computer system was being designed. The multiuser, multifunction capability of UNIX is required by FmHA as it allows a number of users to perform the same or different operations simultaneously.

ORACLE

We have just acquired a new generation data base management system called Oracle that supports open or multiple operating systems. It may be that DALR$ can be converted to Oracle and, in that form, be adaptable to the DOS-based systems used by most personal computers in the farm community.

CONVERTING DALR$—COST AND TIME

I believe we have previously discussed with the committee staff the cost and time that would be involved in converting DALR$ directly to DOS at the present time, which actually we estimate to be about 9 months and $1 million. And to be useful, any conversions would have to be maintained and kept current, which would require more time and funding, raising important legal questions about product liability.

DALR$ HAS BEEN WIDELY MISUNDERSTOOD

We at Farmers Home believe, Mr. Chairman, that DALR$ has been widely misunderstood and has had characteristics attributed to it which it could not possibly perform. DALR$ is simply an aid to decisionmaking—a tool used to do complex mathematical calculations. It does them at high speed and in all combinations to provide borrowers all possible options.

APPEALS SYSTEM

Now, I would like to turn to discuss the subject of appeals system. As you know, the Ag Credit Act provided for the establishment of a national appeals division, staffed by employees with no other duties within the Agency.

That staff has been organized and operational since July of last year. By and large, it has been a successful operation, from both the Agency's viewpoint and from that of our borrowers. If any problem exists, it is that everyone is not familiar with how this should work. First, the burden of proof is on the appellant. Second, the hearing officer can only review what is presented. Everyone needs good documentation.

Experience, however, has pointed out some problems that we are attempting to solve by a regulation change. Sometimes a hearing officer's decision to reverse the decisionmaker is based on information that may be inadequate or even incorrect. This can lead to a decision that is contrary to the statutes. And this is what we are trying to correct even though we expect this provision to be used very rarely by our decisionmakers in Farmers Home.

We have published a proposed regulation that would allow a State Director or a program Assistant Administrator to appeal directly to the director of the Appeals Staff any decision that is contrary to the law or FmHA instructions. This comment period expired on July 10. We received 20 comments, expressing various points of view, which we are still evaluating.

The Director of the Appeals Staff, Pamela Dillon, is here today, Mr. Chairman, and she will address the appeals process in more detail.

APPEALS SITUATION IN TEXAS

You asked about the appeals situation in Texas. Our State office there reports that 42 decisions that come under the authority of the Ag Credit Act have been reversed on appeal. I will summarize them for you.

Twenty-six involved decisions by the County Committees, which, as you know, determine whether applicants are eligible for FmHA assistance. The Texas State Office reports that 10 cases are in various stages of regular processing; 5 have been closed or approved; 6 have been rejected again and new appeal rights have been given; 4 have been withdrawn; and 1 has been suspended as a result of civil court action.

Of the remaining 16 cases, 6 involved the release of proceeds from the sale of security, and the proceeds have been released. Another one has been referred to the National Appeals Staff by the State Director with a request that the hearing officer's decision be overturned. The others are back in the processing chain or have been restructured in some manner.

We have been working closely with Texas and other States on timely implementation of appeals decisions.

This does complete my formal statement, Mr. Chairman. I will be happy to answer any questions you might have. Thank you.

[The prepared material of Mr. Johnson appears at the conclusion of the hearing.]

Senator CONRAD. Thank you very much, Mr. Johnson. I appreciate, first of all, some of the steps that you have taken in order to acknowledge suggestions that we had made in the previous hearing. I very much appreciate those changes. I think those are productive changes for the agency and productive changes for the borrowers as well.

One area that I want to review with you again is the whole question of the DALR$ program, and specifically the providing of that program in Disk Operating System, DOS, so that more people can take advantage of it.

I'm not sure I understood the upshot of your testimony. Is it your testimony that FmHA will move to make the DALR$ system available in a DOS mode?

Mr. JOHNSON. What we have addressed—and I would like to call on Mark Boster, if I might, to address this in a little more detail. I do want you to know that I have taken the recommendations and requests of this committee very seriously, and I have put this as one of our highest priorities, the conversion of this, along with our Farm and Home Plan, as well as our CENTS program.

I personally would be very much concerned about us as a Federal agency getting in the matter of producing software for sale to the general public with the responsibility to maintain that as such. As I indicated, I think that could be potentially a problem.

However, we are attempting—and I will let Mark explain, hopefully in lay and better terms than I can. We think that we're approaching and would essentially get to that point.

Senator CONRAD. Before that, let me just outline my concern. It's a little like us publishing laws that are in Swahili. You know? We have an obligation to publish them in the language that most of the people who will use them are fluent. In this new computer age, we have a similar situation developing. Computer programs become the language, the way we express ourselves, the way we communicate with each other. If we use a system—and you used the UNIX system that unfortunately is not in as much usage as a DOS system, then what we've done, in effect, is make it unavailable to many people. I understand the reason for it operationally within the Department, but in writing the program for the UNIX system, you have limited our ability to communicate with people. So I'd be very interested in the answer of the Administrator in charge.

Mr. **Boster**. Thank you, Mr. Chairman.

For us to convert the DALR$ program to a DOS environment, or Disk Operating System, would require a totally separate effort, and we would have to maintain two separate systems, our UNIX-based system and a DOS-based system. The DOS system would always lag behind the UNIX system. That is, the DOS system would never be current or as current as our official UNIX system because we would have to modify and test the UNIX system before making changes to the DOS system.

What Farmers Home Administration has recently done is moved to the Oracle relational data base management system, which is a state-of-the-art product currently on the market. Oracle has a unique advantage to meet our concerns and to meet the committee's concerns. It operates under various operating systems including UNIX and DOS. We believe that it will allow us to convert DALR$ to the more updated, state-of-the-art Oracle system. And, once converted to Oracle under UNIX, we believe that DALR$ will be transportable to other operating systems, including DOS.

Now, we are very reluctant to commit to that at this point in time because we've only had the product for about 4 weeks. And while we did some extensive testing on it and proved that in theory we could do this, for a piece of software as complex as DALR$, we want to explore the concept further. We have initiated discussions with the manufacturer of Oracle and are working with them. While we remain optimistic, I want to express that that's a cautious optimism.

Senator **Conrad**. All right. Well, I very much commend you for making this move. This is exactly what we ought to be doing, trying to make our systems more transparent to everyone. I'm very hopeful that that will work out, and I ask that you keep the committee advised.

Mr. Johnson, you made, on the top of page 2 in your prepared testimony, some indications that buyouts might be attractive for a number of reasons. One of them that you indicated was that there was a "potential for 'sweetheart' deals," that "the recapture period for buyouts is only 2 years compared to 10 years for a write-down, and the potential recapture of appreciation is less for buyouts than for write-downs." But borrowers, as I understand it, would not want to sell out at the buyout price, would they? Because upon sale they would then owe FmHA the difference between the buyout value and the fair market value.

Mr. **Johnson**. We know of a few cases in this general problem area. We know it's a potential problem there, as we have cited here, for the reasons that we have cited it. We have found one that was brought to our attention by one of your colleagues in the House, the case in which a guy wanted to buy it because what he was actually doing, he was passing it on to a John Deere tractor dealer, who was turning it back to him and leasing it back to him and letting him use it. They weren't going to close the deal for after 2 years, in which time it would be past the 2-year requirement on the recapture provision. The General Accounting Office has noted some cases, about six cases in one county office, of net recovery buyouts by borrowers who had not dealt in good faith. In another State, we have two cases of buyout by borrowers who had dealt in blatantly bad faith, false statements, conversion or concealment of security and the like.

Senator CONRAD. I see.

Mr. JOHNSON. We know of a few cases.

Senator CONRAD. So we're talking about a small number of cases here that would fit.

Mr. JOHNSON. We do not know how large it is. We know it's vulnerable to it, and we are not suggesting, certainly, that Congress had intended that. And that's the reason we're trying to point it out as what we think is a vulnerability that we have here and that should be corrected because we feel that—you know, it's my belief from our earlier discussions that probably the thoughts of Congress was that more people, more farmers were going to be able to qualify for the write-down, and that the buyout would be rarely used. We have found the reverse situation.

Senator CONRAD. I'll tell you, the sense of Congress clearly was that the buyout would be a last resort, that buyout would be very seldom used, that the write-down would be by far the more preferable course, assuming the act was administered correctly. One of the concerns that the subcommittee has had, in fact, is that the numbers seem to be going in the direction of buyout rather than write-down. These statistics make us wonder if the way the program has been structured administratively and the way it's been administered has precluded people from qualifying for write-downs who ought to qualify, forcing them to the buyout as really the means of last resort.

Mr. JOHNSON. There's one major point that got left out of it. It's good faith on the part of the borrower. That is a requirement. They must have acted in good faith to qualify for a write-down, but they do not have to act in good faith to qualify for a buyout. And that item alone separates it.

Otherwise, with our DALR$ program, it's more of a mechanical process because our process cuts off at such time as we go through the restructuring first before we ever get to the debt write-down.

Senator CONRAD. Well, let me go back to my earlier question. Isn't it true that a borrower would generally not want to sell out at the buyout price because if a sale then occurred he would owe the difference to FmHA?

Mr. JOHNSON. Jack.

Mr. HERTZLER. Mr. Chairman, a borrower does not owe any difference unless there's a gain in the sale.

Senator CONRAD. Right.

Mr. HERTZLER. So if they sold at net recovery value, which is what we're talking about, they can sell to somebody at net recovery value who can in turn sell it at market. It gets it outside of the recapture period, and, of course, all property net recovery value is below market substantially.

Senator CONRAD. That's what I wanted to get at. What we are talking about here is not a deal in which the borrower benefited directly, but a deal in which he would sell out to someone else who then sold at some higher value.

Mr. HERTZLER. Yes, sir. That's the process. The "sweetheart" deal, of course, is divided, whatever the gain is if there would be any. That's the potential problem with it.

Senator CONRAD. Well, let me emphasize that it sounds to me like this is a relatively rare occurrence. We talk about six cases here that you've potentially identified. We'd like to get the documentation on those cases, and we'd like to slam that door shut. I think none of us want to see any loophole that somebody could be climbing through in order to engage in some kind of "sweetheart" deal. So if we could get the documentation on those cases so we could have some clear indication of how people are manipulating, or I think to be more fair we ought to say potentially manipulating the system, then we can work together to slam that door shut.

Mr. JOHNSON. We'll be happy to work with you.

Senator CONRAD. The other matter on the DALR$ system that I wanted to raise with you relates to rerunning DALR$. Even though you've sent a letter out saying that County Supervisors ought to be able to run the DALR$ program another time for borrowers, we are hearing that they're not doing that. Could you tell me if there are other steps that you are ready to take so that we could assure ourselves that the local offices out there have heard the message and that they are going to follow what has been your clear directive now, that they run the DALR$ program a second time for borrowers if they request it?

Mr. JOHNSON. I'll mention some, and then Jack might want to help me out here on this.

As I suggested here, we feel that before we start again—and we did this before our first phase, the first time around—but we feel that we need to have some group meeting that's open for the borrowers to come in, in which we could sit down and discuss it.

Senator CONRAD. Yes.

Mr. JOHNSON. It's more a matter, I think, of communications or lack of communications, than willful on anyone's part, not to comply with something. That's one thing.

Obviously, we're going to have to just keep hammering at our people, by Administrative Notices, tightening up regulations, all of those things, by our training sessions, to let them know that we fully intend for them to comply and to get that out of the way. This will come up a little later in the appeal process. We think the appeal process helps us. Obviously, we're inundated with work, as you're going to find out a little bit later. But, obviously, our people need to take the time to sit down and try to resolve, or at least explain to those farmers, what the problem is. If they don't and it gets into the appeal process, they're going to certainly do it then. So we would like for them to do it on the front end as opposed to waiting to be told to or directed to as a result of an appeal exercise.

So those are some of the things. Jack, do you have something else to add?

Mr. **Hertzler**. No.

Senator **Conrad**. I have enough questions here, Sox, to keep us going for the rest of our natural lives. [Laughter.]

I'm going to give my colleague, Senator Daschle, a chance to make any statement that he might want to make, and try to get answered any questions that he might have in the interest of time. Then we'll come back, and I will have some further questions I'd like to pursue. Then we'll go to our next witness.

Senator **Daschle**. Thank you, Mr. Chairman.

Sox, I would just want to follow up on a couple of things. I remain a real skeptic of the DALR$ program, and I hope that all the different studies that are going to be done will alleviate many of my concerns about DALR$. The fundamental, conceptual problem I continue to have with DALR$—and maybe you can put my concern to rest to a certain extent again this afternoon—is, how do you make projections about viability for any given borrower on the basis of projected prices in outyears which may vary dramatically from one State to another? Address that for a moment, if you will.

Mr. **Johnson**. I may want to call on Jack and Mark here in just a moment to elaborate a little bit more.

Obviously, the computer is a mystery in itself to a lot of people, as we know, as to how it works. But when we keep in mind the simplest elements, as I think of it, all it's going to do is make the computations.

Senator **Daschle**. Right.

Mr. **Johnson**. It's no better—and we've all heard this before—than information put in. The assumptions that are made——

Senator **Daschle**. That's my point.

Mr. **Johnson**. That is, I know, part of your point on pricing and so forth. So, obviously, we have to get the input and have a good, clear understanding of what input is going in, what these assumptions are, even though they may be built into the machine in some way. But, how do we extract them and how do we get a dollar price on an assumption in one area and it will come out differently in a machine in another area when we're supposedly hooked up to the UNIX system? I think that is your question there.

Senator **Daschle**. Well, you touched on both parts of the question. The first is: Where did the figure come from in the first place? The second part is: How is it that after the figure is decided upon there appears to be such variance from one State to the other and the applicability of those figures in outyears?

Mr. **Johnson**. OK. I'm going to turn to Jack and Mark now.

Mr. **Hertzler**. Two issues as it relates to the prices that are used. The current year price or the price that States would use or County Supervisors would use in the next year plan—1990, for instance, we're talking about—are prices that are published by the State director, in their State, based on the best knowledge and experience that exists in the universities and so forth as to what those prices might be next year. When you're talking at outyear prices, which we use in deferrals if we're out 3 years, 4 years, 5 years, those prices are determined by the Economic Research Service and USDA, and based on their best guess at what's going to happen in outyears.

Senator **Daschle**. Jack, let me just stop you for a second. You have an entire industry in Chicago and New York, the futures industry, built around whether or not prices are going to go up or down a couple of cents, and make billions and billions of dollars on the bet that it's going to do one or the other. We are now determining with pinpoint fashion what the price of a certain crop is going to be, and I wouldn't mind doing that if we were speculating with regard to the price for consumer purposes or inflation purposes. But, unfortunately, you have somebody's financial status on the line here on the basis of what you just said was our best guess.

That's why conceptually I have to tell you, I have a real problem. And I don't mean—I shouldn't have interrupted you, but go ahead and finish your answer.

Mr. **Hertzler**. Well, it's the best of best guesses.

Senator **Daschle**. I didn't realize that. Now things are better. [Laughter.]

Mr. **Hertzler**. Let me give you a little background in it. OIG got after us real hard for deferral pricing that we were using years ago. Every county office was using whatever they thought might be the best guess. And between county offices and across State lines, wherever you would go, you would find great differences in those prices that were used. In an effort to try to get some common denominator of prices, we went to ERS and asked them if they could use the same technique they used to project prices in outyears that they do for a variety of things. That's why we used that. We think that's a more sophisticated process, certainly, than a County Supervisor trying to decide what's going to happen 5 years from now. So that's the basis for it.

Senator **Daschle**. I always get a kick out of this; in both the Finance Committee and Agriculture, we get this, and for the life of me I don't understand. I'm not faulting—somewhere somebody's telling you to do this, and I would like to bring him here and have him explain to me how in 1994 and 1995 we think there's going to be a minus 13.5. It's not 13.0 or 14, it's 13.5. Or in 1993, 12.2 difference.

I tell you what, if you can come within two decimal points, I think you're going to be doing well. You're coming in with one-tenth of a decimal point.

I guess the question, the bottom line is, what happens if we're wrong? You know? We say tough luck, I guess. That's just the way it goes. That's just the system.

Mr. **Johnson**. That is business.

Senator **Daschle**. That is business.

Mr. **Johnson**. That is business.

Senator **Daschle**. Well, that's a hell of a way to do business, you know, and that's the problem.

Mr. **Johnson**. Pardon me for interrupting, but if you're going to use—well, the first thing we have to decide, do we use numbers, assumptions like this or do we not use them? I don't know how we're going to—some way we have to come up with some kind of prices, if we're going to estimate yields or estimate prices that we're going to receive for commodities. You've got to have some system to come up with it.

Senator CONRAD. Would the Senator yield for a minute?

Senator DASCHLE. Yes.

Senator CONRAD. I would just follow up on this question.

Sox, I would hope you have more faith in the farm program of this administration than to say that wheat prices are going down 13 percent.

Senator DASCHLE. That's another issue.

Mr. JOHNSON. Did the Economic Research Service give us that? Who did we get that from?

Mr. HERTZLER. What we use, we get from the Economic Research Service.

Senator DASCHLE. Economic Research Service, for the record, so everybody—and, again, I don't hold this against Sox. But wheat, it says in 1989 we're going to go down 2.7 percent again. Then in 1990, 6.8 percent. Not 6 or 7, but 6.8. We're down to one-tenth of a decimal point here. 1991, 9.5. 1992, 10.8.

You take the aggregate here between 1989 and 1995, and we're down about 60 percent in cash commodity prices received. Well, I don't know how anybody's going to pencil out with their portfolio with all these minuses that I see in this chart here.

Anyway, you know, the point is made, and we're not going to resolve it this afternoon. But I must tell you, I have a real problem with doing it that way. We ought to have some way of saying, look, we're going to put a lot more emphasis on this year. You know, we're going to take a look at it each year. But we're going to take a much closer look this year in terms of your viability, and not make a decision with regard to his viability in outyears and say, well, you might be able to do it this year but you're not going to do it in the outyears because DALR$ says you're not going to. Therefore, we're not going to restructure your loan. That's happened in South Dakota.

Mr. HERTZLER. Well, what that should lead to, if deferment doesn't work based on the price system that you're talking about, then you move to a write-down, which is not tied to those numbers. Forward pricing is only used when recalculating deferrals in outyears. Write-down is based on this year or next year, depending upon when the restructuring actually takes place. So it leads to the next step, which in most cases, is going to be much more beneficial than a deferral to the borrower.

Senator DASCHLE. Well, I would think if it were so much more beneficial it would be used a lot more than it apparently it is. For some reason, it's not being used very much.

Let me go to the other issue I had, the other concern. That goes to your plans for this September. Last year, I think there were four problems that we made, and I include us. I wouldn't put the whole emphasis on the disaster cause on your shoulders. But, number one, either we asked for you to respond too quickly, in 180 days—something you probably couldn't do, but we told you to do it. You had a lot more time than that, and you took it. And I think in that process a double standard was created. You set one standard for yourselves, and we helped set it. And we've set another standard for the farmers; that is, 45 days, which brings me to the second problem.

First, there was a double standard. And, second, we asked the farmers to do things in 45 days, which actually translated to 27 days, that they just couldn't do. A lot of them were well intentioned, but they just couldn't do it. Second problem.

The third problem is we gave them a pound-and-a-half of paper, and that was part of the reason they couldn't do it. We gave them too much paper, and it was far too complex.

The fourth problem was we didn't have in many cases, at least in South Dakota, qualified personnel to be able to respond to the concerns that they had, and there was a tremendous amount of confusion.

As they say, there's no education in the second kick of a mule. So I would hope that on all—I guess we don't have to worry about the first concern, but we certainly have the second, third, and fourth concerns: the length of time for farmers to respond, the amount of paper, and the ability to anticipate the problems and having professional people there to be able to cope with this situation when the flood hits.

I know you're sensitive to it, but I'd feel good if you could respond to those three concerns and how you decided to address them.

Mr. JOHNSON. All right, sir. On the length of time, certainly we're going to continue our approach with what we called our rule of reason that evolved into last time beyond the 45 days as to what we expect them to accomplish. We're trying to get a timeframe so we do not get into the Christmas and Thanksgiving——

Senator DASCHLE. But, Sox, let me just interrupt. You know you're right in the middle of corn and soybean harvest. I don't know which is worse, Christmas or harvest, but just take that into account.

Mr. JOHNSON. OK. There's never a perfect time, obviously, to do any of this. Because if you hit it right in one locality, you're missing it in another, and particularly when you get into the multiple crop situations. We are thinking through that, and we have obviously, hopefully, learned and will benefit from some of the situations we've all gone through, and certainly with the help of this committee in citing some of these things to us.

We have reduced the package. This is the package that will be mailed out. So instead of being an inch-and-a-half thick, we're basically just not giving them the regulations, which is the bulk of what that was the last time. It was simply regulations that we were mailing to them so they didn't have to request them. Now they can request them if they feel like they want to see them or need to see them.

That will be the type of package that we're sending out.

Senator DASCHLE. Could we make that part of the record? Could I just see a copy of it?

[The material of Mr. Johnson appears at the conclusion of the hearing.]

Mr. JOHNSON. I'm sorry. What was your third point?

Senator DASCHLE. The third one was how well prepared will your people be in the field to deal with what will obviously be a flood of questions and concerns about their status when these new requirements hit the farm.

Mr. **Johnson**. As we go through it this time, I don't think we'll have the concerns, for example, on the rule of reason and how to implement that. Our people know what our policy is. They know it's very much our direction and has been my direction that we are going to use this Ag Credit Act of 1987 as an opportunity to clean up a portfolio that has been in much disarray over a number of years for a lot of reasons. And we have made that clear. This was very difficult for some of our employees to accept at first, no question, because we have stressed being a prudent lender a long time. And it's hard for any of us to admit that we have failed, for whatever reason, even though we think it's beyond the power and the realm of the borrower.

But once you've done it, we were never going to collect it. That has been my attitude, and I've expressed that before this committee before, and I believe it firmly. This is our opportunity to clean it up, and I believe we have that message through to our people. Now all we have to do is give them the tools. They have more experience on this DALR$ program and so forth, this automation. We were hitting them not just with the DALR$. We were hitting them with automation. So the learning curve that our people had to go through was massive.

The regulations—this is a very complex and large issue, as you are well aware. And so we are doing everything we possibly can, and I think that our people are philosophically going to be in line with us. We're certainly going to be trying to get them in that line, to use this opportunity that we have, and to give the necessary training. And we hope that even expands by these meetings that we're talking about, of meeting with the borrowers and so forth, before we actually get into the heart of this. If we're not ready to do something on the time we send these out because the crop is not in or completed or harvested at that time, we will have a mechanism to let them use, and they won't have to give us a Farm and Home Plan then and complete that until we get through and they do their harvesting.

I may have rambled a little long.

Senator **Daschle**. No, no. In fact, what I'm hearing is encouraging, and I appreciate that. That sounds to me like you're well intended.

Just one clarification, Mr. Chairman. The law says 45 days. It doesn't say working days or calendar days. I would hope we could imply from that that we're talking about working days here, to give the kind of latitude you're talking about. Have you approached that issue?

Mr. **Johnson**. Is that working days or calendar days, Jack? What have we sent out on that?

Mr. **Hertzler**. We're going on what OGC advises, that it was calendar days. So we have treated it, at least in the first go-round, as being calendar days.

Mr. **Johnson**. As I indicated, by starting about September 1, we're not going to have all these holidays and things in the picture, and we can complete this by yearend. I think our timing would be much more orderly to do it in the timeframe that we have laid out here.

Let me say, though, you will find in our recommendations that will be coming to you on other things that we think, we too agree that it should be longer than 45 days. And we're going to be suggesting that that possibly be moved up to some longer period of time. I'm thinking possibly something like 60 days. But you will see that will be a recommendation.

Also, we have to take into account Farmers Home time. You know, we had an obligation on ourselves to complete it in 60 days, and by and large, we did that. We had some that didn't for whatever reason, but by and large, we did complete it in 60 days. So that may need to be looked at, or at least as to when do you start counting the 60 days, from the time you get enough stuff to do it or whatever. But this is something that we are going to be making some recommendations to the committee on.

Senator **Daschle**. Thank you.

Senator **Conrad**. Well, let me just echo what Senator Daschle said in terms of an attitude. I don't want anybody to walk out of here interpreting the questions that we're going to ask, and pursue, to be anything but respectful. Very frankly, the attitude change at FmHA is entirely refreshing. I feel for once that we're working together.

Now, we may have some differences about how things get done, and we may have some suggestions about trying to keep everybody together on track, but no question in my mind there's been significant attitude change. I want to commend you for it and tell you that, in the view of at least this Senator, we very much appreciate it.

Let me pursue the whole question of the September 1 mailing. One suggestion that I've heard is: Wouldn't it make more sense to publish the final regulations on September 1, making them effective immediately, begin training FmHA staff on those final regulations, and then mail the notices October 1 using the final regulations?

Mr. **Johnson**. I will let Jack elaborate on this in a moment.

We looked at several options, as we have considered that, a way to get the new regs in and get them in place. We know probably something like the 1st of August is about the earliest that we could get those regs through, and that was going to be extremely tight on us. We felt that there is a little bit more cleanup that's probably going to come as we go through. And since we're looking at less than 15,000, there could even be some arguments made for not doing one now, just wait until the first of the year and go with one again. But we feel that we have a legislative mandate because after 180 days we have to act. And the earliest we could act would be on the basis of the information that we got on August 1 to assure that these people were at least 180 days late.

So we have debated it quite a bit, but that is where we're coming down. We thought there'd be less conflicts with both our schedule and for the farmers and everything and to complete this second phase by the first of the year, so then we start on a whole new deal with a new regulation that was cleaned up starting into the first of next year.

Senator CONRAD. Well, let me say to you, Sox, I'll take one more run at this, and then I'll drop it and go on to other things. But I would urge you to think about this one more time on this basis: It seems to me that it would be much less confusing if you did this round under new final regulations, gave more time for training of the FmHA field staff. The one thing that we're hearing back is that there is still confusion over FmHA policy, although these reports are spotty around the country. You know, you hear very good things from parts of the country, not so good from other parts. But the suggestion that we're getting is some more training is needed and that instead of processing the next round of restructuring applications under the interim regulations, process them under the final regulations. I believe that suggestion might have some merit.

I won't press you on it any further. I just suggest taking another look.

Let me ask you another question. We've heard that there's still a fair amount of misunderstanding. I don't think that's something that should surprise any of us, given the complexity of what we're about here. Improvements have been made, and so we're sort of shooting at a moving target here. One of the things that's been suggested is that you consider including a list of often-asked questions and answers in the Notice of the Availability of Loan Servicing programs sent to delinquent borrowers. In other words, to just add a sheet that would have frequently asked questions and the answers. We've found many think that would be of assistance to those who receive the packets.

Would you be willing to consider this?

Mr. JOHNSON. We'll certainly consider that. I would like to think we're probably doing that, maybe not at the time we mail out the package itself, but in conjunction with it, as we become aware of them.

Jack, I don't know if you have anything more to add. But we'll be happy to look into that and consider it. We do this with our people. We have teleconference calls and others, and we get questions and answers, and we send them back responses. Certainly to the extent that some of those questions and answers would be beneficial to the borrowers, we'd like to disseminate it some way. So we'll certainly look into it. The timing of it, I'm not going to say would necessarily be in with this particular package that's mailed out to them, but it should be following very quickly, and certainly handed out and discussed at these training meetings and so forth.

Senator CONRAD. I do think it would be useful.

The other issue I'd like to pursue is the question of additional training because over and over what we're hearing is that in terms of understanding what's involved with restructuring, there is a lack of understanding or an uneven level of understanding. One suggestion has been that you consider requiring County Committee members to receive training within 60 days of their election or appointment and annual training thereafter.

What's your thought on additional training sessions or requiring people who are newly onboard to receive training within 60 days, and followed by some kind of annual refresher course?

Mr. JOHNSON. No doubt we need more training and we need it quicker on those as they are coming in because, of course, you're on a rotational basis with those County Committee members. I'm not sure what our regulations require. I thought we had at least an annual training, don't we, Jack? Do you recall on that?

Mr. HERTZLER. I don't know what the training requirements are. That's handled by the personnel folks. But the county offices are required to train new county committeemen after they come onboard. We know that some of them are not getting that done, and refresher training, obviously, is a good requirement.

Mr. JOHNSON. We'll be happy to look into that and strengthen it. We have made some attempts by reminders to our State directors in recent years, I know, as far as getting those people trained.

Senator CONRAD. Let's go back to the Texas situation because you know from our last meeting and last round of questioning that there's a very strong feeling that Texas—we have a Texas system, and then we have the rest of the United States.

Mr. JOHNSON. It's unique. I agree. I live there.

Senator CONRAD. Well, they have their own program down there. I think they thought that the bill that Congress had passed was advisory in nature, more of a guideline than anything else.

I notice in your testimony, you say you have 42 decisions that were reversed through appeals. Can you give me some indication of how that compares to other States?

Mr. JOHNSON. I believe it is probably, if not the largest—it is the largest, right?

Ms. DILLON. Yes.

Mr. JOHNSON. We do have a statistical report that we'd be happy to share with you on the numbers for the various areas.

[The National Appeals Staff Statistical Report can be found at the conclusion of the hearing.]

Senator CONRAD. Maybe—is it Pam?

Ms. DILLON. Yes, it is.

Senator CONRAD. Pam, can you give me some sense of where they rank?

Ms. DILLON. Texas has the most number of decisions reversed of any State, in any program.

Mr. JOHNSON. And they also have one of the biggest caseloads.

Senator CONRAD. Yes. Well, can you give me some idea of proportion here? Are they way out in front?

Ms. DILLON. Yes, they're way out——

Senator CONRAD. In terms of caseload, on a per-case basis, do they also lead in that?

Ms. DILLON. I don't know if they're the largest caseload in the country because there are some other States that have very large caseloads. But they are substantially greater in the number of appeal decisions, period, and then the number of cases reversed, both in housing program and in farmer programs.

Senator CONRAD. Would you say it is fair to say that they're by far and away the leader?

Ms. DILLON. Yes.

Senator CONRAD. By far and away.

Ms. DILLON. Yes, sir.

Senator CONRAD. Sox, maybe it's time to take a trip home. This wouldn't be a vacation. Somebody needs to go down there and get those guys onboard. I mean, I tell you, I am getting so many complaints up here. There's one of two ways we could handle it.

You could go and try to get them to get onboard here, or we could have another hearing and just focus on Texas. You could pick your poison on this one.

Mr. JOHNSON. Certainly, I would hope that would not be necessary. As I started becoming aware of implementation problems some time ago—and we've had spotty ones all over the country, but certainly we had a rash of them in west Texas, in particular and primarily with one counselor that was involved whom I've spoken to several times. And he was very helpful to us in pointing this out and giving us information to help us zero in on it.

I have had discussions with the State director. I've had him in here at least on one occasion on this issue. We have had several teleconference calls with his staff and our staff. We found that they had a conception, particularly as it related to County Committees, they had an interpretation that they were applying to a regulation. We could certainly see how they came to that conclusion which, in effect, says: If an adverse decision is made and the hearing officer's decision goes back to them and says take it back to the decisionmaker, the decisionmaker was the County Committee, so they were going back to the County Committee. And we do know—and it sounds like a horror case, I recognize that. But hopefully, from these numbers that I gave you today, this is, I'll say, a significant improvement from our earlier discussions and we've started getting a more uniform interpretation of our intent to implement.

They know my strong personal commitment to the value and the need of appeals. I personally before I came up here—I've indicated to you before, I think—I held as a hearing officer over 100 appeals, so I know something about what they go through. I know there are errors made on both sides of the issue, but we must—when we get a decision, if it's not going to really shoot us out of the saddle and cause us to do something totally improper or illegal, we should put that behind us, in my opinion, and go on. And I have told Texas and I've told our other people this.

Senator CONRAD. Well, after this hearing, I hope you'll call them another time and tell them that if they don't straighten up and fly right, that they're going to have a real problem, and they're going to be up here for a hearing. And it wouldn't be all that much fun, maybe.

Mr. JOHNSON. I hear you.

Senator CONRAD. So they need to be serious about obeying the law just like everybody else is in the country. I appreciate the efforts that you've extended in that regard as well.

I can tell you that I had a very strong recommendation to have a hearing already on Texas. We're getting that many complaints about how they're operating. I said, no, I believe Sox is operating in good faith and that he has made efforts to correct the problem, and we're going to give him an opportunity to have those efforts bear fruit. So please don't make me look as though I made a mistake.

Mr. JOHNSON. I appreciate your consideration, and we'll take care of it.

Senator **Conrad**. Another item that I wanted to bring up is whether your agency would consider preparing a work book on the calculations made by DALR$ and include it in the packet containing notices. In other words, we don't have an DOS-operating system that will allow DALR$ to be used on most of the PC's operating in the country. One way to make this system more transparent, more understandable, would be to have a simple work book on the calculations that are included. That is one way of making it more understandable.

Would you consider this?

Mr. **Hertzler**. Certainly we would consider it, but it will not be a simple work book. It's a very complex process, and, you know, I am not making fun about your comment. But it's a very complicated process, and there's many, many, many calculations in the process.

Senator **Conrad**. I understand that. But what I meant by simple is, you know, simple in terms of the cost and the presentation. There are many calculations, and really I think that argues in favor of having something that's available out there. Even if it was on newsprint stock—you know what I'm saying? Something relatively inexpensive that would give those who have an interest a chance to understand the process. I understand most of the people aren't going to pursue it in that kind of depth, but there are many advisers out there who would find it useful to, since we don't have this in a DOS-operating system.

Mr. **Johnson**. Well, obviously, I think our best solution to that, Mr. Chairman, would be for us to go as I have indicated in our testimony here, to move forward to this Oracle system that Mark Boster has described. He thinks it is something that is very likely and would be much more easily understood. Any time you get into a work book situation, you're going to have to decide: Am I designing this book for computer-oriented people that are very knowledgeable, or am I doing this for a farmer or for Sox Johnson or somebody who may know very little about it? And I think that would be the issue on any kind of a book that we gave out, as to who would we want to really be addressing such a thing to. And I'm not sure that I understood that, Mr. Chairman, from your suggestion. Certainly, we can look into it, but I know you wouldn't want us doing something that wasn't going to be useful and worthwhile to someone.

Senator **Conrad**. No. I wouldn't suggest you do that.

Let me ask you a question, again going back to the number of buyouts as compared to write-downs. In our analysis, one of the reasons that many borrowers did not qualify for restructuring is that other creditors did not see the wisdom of going along with restructuring. Now, there's nothing we do to force other creditors to pursue this same course. We know that. But would you consider preparing a document showing the benefits of restructuring, that could be made available to other creditors as a way of educating them?

Mr. **Johnson**. Certainly we would be happy to look into that to see—I can't conceive of anything we would say that any other, you know, bona fide institutional-type lender wouldn't already know. They know about such things as deferral and restructuring and rescheduling and all those things.

Senator CONRAD. Well, let me just say to you, we've found that some don't understand the options that might be available to them. You get into this area, and it becomes confusing, kind of a morass, and we've had the suggestion made that if there was something available to creditors that might be of assistance in letting them understand benefits that might accrue to them by restructuring.

Mr. JOHNSON. We might look at something. I know when I was conducting a lot of the farm program appeals, I used our old borrower options guide that gave the borrowers their rights and so forth. I used that as a checklist, and I asked questions on it; and it took a sequence of things that we could go through and options, and it served as a guide or a format for us to actually conduct the hearing. It might be possible that we could have some suggested type of guideline to go out so they wouldn't just inadvertently overlook some option that might be helpful. That could be a one- or two-page deal possibly.

Senator CONRAD. I tell you, I think this would be a very simple matter.

Well, I have other questions that I'll submit to you in writing. I think we've covered some of this ground before. We wanted to have a chance to get an update and pursue some of these questions again.

[The questions of Senator Conrad appear at the conclusion of the hearing.]

Senator CONRAD. I want to turn now to Pam Dillon, the Director of the National Appeals Staff, Farmers Home Administration, and have a chance for her to give her testimony and then pursue some questions as well. Welcome.

STATEMENT OF PAMELA M. DILLON, DIRECTOR, NATIONAL APPEALS STAFF, FARMERS HOME ADMINISTRATION, U.S. DEPARTMENT OF AGRICULTURE, WASHINGTON, DC

Ms. DILLON. Thank you and good afternoon, Mr. Chairman and members of the committee. Thank you very much for inviting me here. I appreciate the opportunity to be with you today, Mr. Chairman, to discuss the Farmers Home Administration appeals process, which was mandated by the Agricultural Credit Act of 1987.

APPEALS OPERATION

The act specified that the appeals operation was to be separate from Farmers Home loan activities, and I can assure you that this is the case.

Those of us engaged in the FmHA appeals process are quite proud of the service we believe we are providing to applicants for and borrowers of FmHA assistance and to FmHA by way of fair, timely, and impartial hearings and reviews of appeal requests.

HEARINGS, DECISIONS, REVIEW DECISIONS, AND SETTLEMENTS

Since our inception on July 12, 1988, through June 30, 1989, the National Appeals Staff has conducted over 3,000 hearings, issued over 2,500 hearing decisions, issued over 300 review decisions, and generated over 200 settlements as a result of the appeals process. Combining decisions made at the hearing stage with decisions made at the review stage, the appeals staff has reversed FmHA adverse decisions 39 percent of the time, upheld them 57 percent of the time, and modified them 4 percent of the time.

UNAWARE OF ANY COMPLAINT

We are unaware of any complaint from any member of the public that the appeals staff has not conducted fair and impartial hearings and reviews. We believe our statistical record supports our assertion of complete impartiality and independence from the direction or control of program officials, as the Agricultural Credit Act of 1987 intends.

ASSUMPTION WAS MADE FOR 5,000 APPEAL REQUESTS FROM ALL PROGRAMS ANNUALLY

When the appeals staff was organized, the assumption was made that we would receive approximately 5,000 appeal requests from all programs annually, and that 1,000 of those requests would result in the second-level review requests. This assumption was based on the past experience and statistical records of FmHA. The appeals staff was structured to consist of 57 hearing officers and a total staff of 85—including review officers, managers, and support personnel—to accommodate this anticipated workload.

RECEIVING AS MANY AS TWO OR THREE TIMES MORE APPEAL REQUESTS THAN ANTICIPATED OR THAN WE CAN HANDLE ON A TIMELY BASIS

Our last quarter's statistics indicate that we will be receiving as many as two or three times more appeal requests than anticipated or than we can handle on a timely basis. For our first 9 months in operation—July 1988 through March of 1989—we received 3,326 appeal requests, of which 1,243 were farmer program appeals. However, for the last quarter alone, April through June of 1989, we received 3,626 appeal requests, of which 2,885 were farmer program appeal requests, most resulting from increased servicing of delinquent borrowers.

MORE ANNUAL APPEAL REQUESTS THAN ANTICIPATED

If the last quarter is any indication of our workload to come, and I believe it is, we may be receiving close to 14,000 appeal requests annually, or more, instead of the 5,000 anticipated and for which we are staffed. The appeals staff is currently in the process of hiring an additional 20 hearing officers to increase our hearing capacity.

In addition, we have notified this committee of the inability of the current appeals staff to handle this anticipated increased workload on a timely basis and that delays in the appeals process may result. We have developed a notice, which we shared with this committee, to be given to appellants advising them that no further adverse action will be taken against them until their appeal rights have been exhausted.

Thank you, Mr. Chairman. This completes my formal statement. I will be glad to answer any questions you might have.

Senator CONRAD. Thank you. We appreciate very much your attendance here today and also the dimensions of the task.

Can you share with us if there have been any attempts to curb the independence of the National Appeals Staff?

Ms. **Dillon**. I guess one of the parts of the job of all of us in the National Appeals Staff is to deflect attempts to bring us back under the influence of the program staff. So I'd have to say that States sometimes try to influence a decision, and sometimes the national office and OGC, so that it's a fairly constant requirement that we assert our independence. But I think we do it successfully.

Senator **Conrad**. My understanding is that you've had attempts made by State offices and the national office, to intercede in cases before you?

Ms. **Dillon**. Yes. We've received requests to have hearing officer decisions set aside.

Senator **Conrad**. What's been the response? How have you responded to those kind of requests?

Ms. **Dillon**. I think we've received—one of the problems is we don't know all the time where the cases are because they may not be sent to the National Appeals Staff. The State may send them to a program staff member, or they may send them to the Office of General Counsel or some place that we don't know about. And the appellant isn't aware of it. But things that have come to me that I'm aware of, we've received about 60 such requests, I would say.

I have determined that only three of those requests were worthy of a second hearing. I didn't think that they were sufficient to reverse the decision, but sometimes information is not presented at the hearing—and later on it's raised—that may be crucial to the borrower's situation. And so we have asked on three occasions for new hearings so that that new information can be challenged, at least by the borrower, and we get the whole thing out. But as a rule, I pretty much take a look at what the States ask, and except on three occasions, we have refused to set the decisions aside.

Senator **Conrad**. I just want you to know that we appreciate your refusal to compromise the independence of the National Appeals Staff. That is something that is taken as a very serious matter here and that we would hope that you would share with us if there are attempts to do that, and to know that you would have very strong support on both sides of the aisle here in resisting any attempts to inhibit the independence of the appeals staff. That is something that's obviously very important to the appropriate functioning of the whole process. If there is to be a sense and, in fact, the reality of fair treatment, then the National Appeals Staff has to be independent.

I know as an administrator how painful that may be from time to time. But I also know how important that is, and so I do commend you for resisting any attempts to impose on the independence of the National Appeals Staff, and to know that you have the very strong support of this committee, and I believe of the Congress, for maintaining that independence.

Ms. **Dillon**. Thank you, sir. That will be very appreciated by the hearing officers, too, who get a lot of flak.

Senator **Conrad**. I'm sure they do.

I'm also disturbed by reports I've heard that FmHA staff have not enforced the decisions of the National Appeals Staff. Could you tell me if, in your judgment, you have the authority to enforce your decisions?

Ms. DILLON. We have no enforcement authority on the National Appeals Staff. We rely on the State to implement the decisions that we issue.

Senator CONRAD. Do you have any sense that there are States where there have been cases in which the decisions have not been implemented?

Ms. DILLON. I'm sure you're aware in Texas that was one of the major problems, that there were reversal decisions that never got implemented or they have just recently been implemented. And on other occasions, there are other States that may object to certain decisions and spend some time before they implement it. But it isn't an enormous problem, but there are places, or there are individuals within States who haven't come around to the fact that they have to implement the decisions on a timely basis.

Senator CONRAD. Sox, I want to go back to you. I want to give you a chance to tell us—which I'm sure is the case—that you do not tolerate efforts by State staff or national FmHA staff to subvert or in any way avoid implementing the decisions of the National Appeals Staff.

Mr. JOHNSON. Absolutely. I think I've already indicated that here earlier today. I think Pam could certainly indicate to you that when those situations have arisen in the State or she became aware of them or we became aware some way that someone wasn't implementing the proper independence, consideration of that committee wasn't being adhered to, we've talked about it on occasion. And certainly I've tried to step in to move forward to put that to rest because I do want the decisions implemented.

I must reemphasize what I think is the importance of the proposed rule change that we have to correct some of the problems that we have all agonized with in having a good professional relationship between our program people and our appeals people. I think that regulation, proposed rule, certainly we may have to expedite the timing of it, but the concept of it I think would help resolve a lot of our problems and help us be a lot more professional and would eliminate some of the frustrations that some of our program people and State people have gone through in implementation when they feel that a hearing officer's decision, judgment, has been substituted for their judgment, and they feel that they're, in effect, supposedly more knowledgeable on the subject itself. So I think it would be something to help strengthen our independence and our professionalism and our working relationship between the program and our appeals staff.

Senator CONRAD. Let's talk about this.

Proposed regulations which would provide a review process for the National Appeals Staff decisions. These regulations would, at least on the surface, appear to threaten the independence of the National Appeals Staff. It's my understanding that the regulations could violate a borrowers' right to a full appeal. The process may eliminate the borrowers' right to have the opportunity to address all issues related to a National Appeals Staff decisions and could cause illegal delays in the implementation of the appeal ruling and would potentially provide an incentive for FmHA staff to request a review of any National Appeals Staff decision they don't agree with.

Could you give me your reaction, Pam, to the proposed regulations?

Ms. **Dillon**. We proposed that we were—the National Appeals Staff was one of the people that proposed it because we were concerned that the States were sending cases to a variety of places, such as national office program officials or general counsel or anybody where they believed they would get a receptive audience. And we were concerned that these cases, without any authority, were going all around everywhere. And a person who had a favorable decision didn't know what was happening to their case and wasn't getting it implemented.

Second, when we issued our first regulations, the final ones last year that set us up, some people had commented on that idea that there be an agency review right, and so we believed that we should propose the regulation and see what the public thought about it, if they thought it would be adverse to the borrower or if they could see that it might be a more efficient way of handling it. But we have received some very serious comments on it from the public, and we're considering them and evaluating what their comments are.

Part of the comments do indicate that we might be violating certain provisions of the law on timeliness of implementing decisions, and we had no intention of doing that. And so I know that on those matters that we're definitely taking a very serious look. But we were hoping to get the public's comments, and we have, and we're evaluating them.

The National Appeals Staff concern was that the agency was already doing a lot of this, and we wanted some order to it.

Senator **Conrad**. Well, I just want to express our concern as well. I don't think this has been done in a way that's intended to create a problem, but I think there's the potential for it. I just want to alert you as to the concern of the subcommittee on that matter.

Let me indicate to you once again that I do have some additional questions for the record that I'd submit in writing, and we'll leave the record open for 2 weeks in order to get those questions answered. Is that sufficient time?

Mr. **Johnson**. Obviously, we don't know how many questions you have, but we'll make an effort to answer them in 2 weeks.

Senator **Conrad**. Sox, this will give you some idea. This is the executive summary. [Laughter.]

Well, I do have questions. Senator Daschle has some questions as well that he'd like to submit, and we will leave the record open for 2 weeks to get those answers.

Let me say once again for the record that I appreciate the attitude, and we do have, I feel, a spirit of working together here. I hope that continues, and we appreciate the tremendous task that's been assigned you. We know it's a tremendous amount of work, and it's not easy to weave one's way through all of these thorny details. But I think through good faith and working together we will be able to resolve some of these things in a way that makes sense for everyone.

With that, we'll have the hearing end and again we thank the witnesses for your attendance and appearance here today.

[Whereupon, at 4:01 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

[Material submitted for inclusion in the record follows:]

APPENDIX

U.S. DEPARTMENT OF AGRICULTURE,
FARMERS HOME ADMINISTRATION,
Washington, DC, August 11, 1989.

Subject: Update of Loan Servicing Activity Report.
To: Suzy Dittrich, Minority Professional Staff Member, Senate Agricultural Credit Subcommittee.

Since the August 1 oversight hearing on FmHA's implementation of the Agricultural Credit Act, considerable work has been done to reconcile the figures in the July 7 loan servicing activity report. Attached is the latest update.

The changes are not substantial, but from a statistical standpoint they may be significant. You may wish to substitute this report for the one submitted for the official hearing record.

RONALD K. ENCE,
Director, Legislative Affairs and Public Information Staff.

Enclosure.

[Material supplied by Neal Sox Johnson follows:]

FARMER PROGRAM SERVICING ACTIVITIES

FmHA, FP, Program Development Staff
July 7, 1989

	BORROWER WRITE-DOWN								BORROWER WRITE-OFFS							
STATE	TOTAL DOLLARS	AVG DOLLARS	TOTAL BORR.	OVER $5 MIL	$1 MIL/ $5 MIL	$500 k / $1 MIL	$250 k / $500 k	UNDER $250 k	TOTAL DOLLARS	AVG DOLLARS	TOTAL BORR.	OVER $5 MIL	$1 MIL/ $5 MIL	$500 k / $1 MIL	$250 k / $500 k	UNDER $250 k
ALABAMA	6,998,556	142,828	49	0	0	1	8	40	10,856,863	140,998	77	0	1	6	6	64
ALASKA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
ARIZONA	9,351,554	467,578	20	0	4	2	6	8	3,199,363	457,052	7	0	1	1	2	3
ARKANSAS	25,086,374	197,531	127	0	4	6	15	102	51,780,930	257,617	201	0	3	24	35	139
CALIFORNIA	11,607,480	305,460	38	0	3	2	8	25	9,469,732	326,542	29	0	2	1	3	23
COLORADO	5,432,607	132,503	41	0	0	2	3	36	5,118,611	159,957	32	0	0	1	7	24
CONNECTICUT	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
DELAWARE	223,584	223,584	1	0	0	0	0	1	0	0	0	0	0	0	0	0
FLORIDA	9,343,822	145,997	64	0	0	2	8	54	17,363,916	403,812	43	0	3	4	7	29
GEORGIA	23,483,251	223,650	105	0	3	7	24	71	36,986,532	256,851	144	0	1	13	27	103
HAWAII	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
IDAHO	19,472,747	150,952	129	0	0	4	21	104	16,474,825	203,393	81	0	1	2	25	53
ILLINOIS	18,254,439	139,347	131	0	0	2	15	114	9,755,893	131,836	74	0	0	3	5	66
INDIANA	27,429,185	166,237	165	0	0	5	21	139	22,446,478	193,504	116	0	0	10	22	84
IOWA	13,730,499	108,114	127	0	0	1	8	118	9,495,586	113,043	84	0	0	3	10	71
KANSAS	9,097,787	118,153	77	0	0	2	5	70	3,461,074	119,347	29	0	0	0	2	27
KENTUCKY	16,837,690	99,045	170	0	0	1	15	154	19,246,554	185,063	104	0	1	8	14	81
LOUISIANA	43,064,996	237,928	181	0	2	17	37	125	107,772,810	219,050	492	0	12	33	100	347
MAINE	4,115,932	158,305	26	0	0	2	2	22	10,890,540	265,623	41	0	1	4	13	23
MARYLAND	133,520	44,507	3	0	0	0	0	3	1,640,241	126,172	13	0	0	0	2	11
MASSACHUSETTS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
MICHIGAN	34,624,997	207,335	167	[illegible]	0	14	20	133	46,940,377	375,523	125	0	0	11	28	86
MINNESOTA	37,596,473	116,759	322	[illegible]	1	2	30	289	52,115,220	154,645	337	0	2	23	32	280
MISSISSIPPI	43,162,879	256,922	168	0	7	23	26	112	41,575,081	199,880	208	0	5	19	28	156
MISSOURI	23,475,861	126,214	186	0	0	2	14	170	21,724,182	175,195	124	0	2	2	18	102
MONTANA	21,176,183	275,015	77	0	4	8	13	52	11,627,039	332,201	35	0	2	3	12	18
NEBRASKA	14,762,146	132,992	111	0	0	1	15	95	15,853,563	208,600	76	0	1	3	16	56
NEVADA	775,988	258,663	3	0	0	1	0	2	244,836	244,836	1	0	0	0	0	1
NEW HAMPSHIRE	3,000	3,000	1	0	0	0	0	1	0	0	0	0	0	0	0	0
NEW JERSEY	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NEW MEXICO	1,643,065	49,790	33	0	0	0	1	32	1,443,697	111,054	13	0	0	0	0	13
NEW YORK	6,636,511	174,645	38	0	1	1	6	30	3,556,251	148,177	24	0	0	0	4	20
NORTH CAROLINA	11,857,084	191,243	62	0	1	7	6	48	14,477,893	206,827	70	0	1	5	12	52
NORTH DAKOTA	35,928,510	159,682	225	0	1	8	23	193	28,440,181	169,287	168	0	2	5	39	122
OHIO	4,896,758	174,884	28	0	1	1	2	24	11,501,080	230,022	50	0	1	5	8	36
OKLAHOMA	54,734,268	184,290	297	1	5	17	41	233	33,348,841	203,347	164	0	2	10	23	129
OREGON	9,329,751	216,971	43	0	0	2	9	32	11,740,341	255,225	46	0	1	5	9	31
PENNSYLVANIA	3,591,157	156,137	23	0	0	1	4	18	2,764,446	212,650	13	0	0	2	0	11
RHODE ISLAND	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SOUTH CAROLINA	10,814,094	240,313	45	0	1	5	7	32	4,150,875	133,899	31	0	0	2	4	25
SOUTH DAKOTA	33,148,161	124,150	267	0	0	4	27	236	13,057,376	134,612	97	0	0	2	16	79
TENNESSEE	13,865,300	163,121	85	0	0	6	13	66	8,150,376	203,759	40	0	0	2	5	33
TEXAS	20,977,213	173,365	121	0	1	3	12	105	20,895,161	202,866	103	0	2	7	21	73
UTAH	141,062	70,531	2	0	0	0	0	2	1,140,524	228,105	5	0	0	0	2	3
VERMONT	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
VIRGINIA	5,154,814	132,175	39	0	0	1	7	31	3,860,961	87,749	44	0	1	0	2	41
WASHINGTON	6,557,677	156,135	42	0	0	2	3	37	1,345,556	168,194	8	0	0	1	0	7
WEST VIRGINIA	1,274,534	159,317	8	0	0	1	1	6	67,785	22,595	3	0	0	0	0	3
WISCONSIN	18,146,757	121,790	149	0	0	1	15	133	16,311,811	149,650	109	0	1	1	12	95
WYOMING	7,188,166	224,630	32	0	0	2	9	21	4,010,614	190,982	21	0	0	1	4	16
WEST PAC TERR	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PUERTO RICO	1,668	1,668	1	0	0	0	0	1	0	0	0	0	0	0	0	0
VIRGIN ISLANDS	95,000	95,000	1	0	0	0	0	1	114,969	114,969	1	0	0	0	0	1
U.S. TOTALS	665,223,091	165,068	4,030	1	39	169	500	3,321	706,418,986	202,819	3,483	0	49	222	575	2,637

TOTAL WRITE-DOWN & WRITE-OFF: $1,371,642,077 BORROWERS: 7,513 WEIGHTED AVERAGE: (165,068 + 202,819)/2: $183,943

FARMER PROGRAM SERVICING ACTIVITIES
FmHA, FP, Program Development Staff
July 7, 1989

BORROWERS WITH WRITE DOWNS AND WRITE OFFS IN EXCESS OF $250,000.00

STATE NAME	WRITE DOWNS	DOLLAR AMOUNT	WRITE OFFS	DOLLAR AMOUNT
ALABAMA	9	3,455,523.41	13	7,890,126.83
ALASKA	0	0.00	0	0.00
ARIZONA	12	8,214,106.12	4	2,845,222.42
ARKANSAS	25	16,487,406.08	62	36,131,988.05
CALIFORNIA	13	9,178,987.24	6	5,485,583.52
COLORADO	5	2,192,530.27	8	3,068,101.96
CONNECTICUT	0	0.00	0	0.00
DELAWARE	0	0.00	0	0.00
FLORIDA	10	3,644,872.12	14	12,230,144.83
GEORGIA	34	18,331,547.00	41	20,910,483.00
HAWAII	0	0.00	0	0.00
IDAHO	25	9,454,993.00	28	11,549,755.00
ILLINOIS	17	6,277,048.53	8	3,774,694.26
INDIANA	26	10,986,986.04	32	14,645,466.04
IOWA	9	3,376,994.00	13	5,012,398.15
KANSAS	7	2,679,419.48	2	676,120.30
KENTUCKY	16	5,239,539.27	23	11,729,997.32
LOUISIANA	56	29,033,725.64	145	72,408,567.61
MAINE	4	1,951,967.01	18	8,852,210.20
MARYLAND	0	0.00	2	784,106.55
MASSACHUSETTS	0	0.00	0	0.00
MICHIGAN	34	16,864,914.38	39	17,710,785.85
MINNESOTA	33	12,236,417.43	57	28,010,020.08
MISSISSIPPI	56	34,510,672.07	52	30,646,448.55
MISSOURI	16	6,104,655.48	22	9,895,263.76
MONTANA	25	14,985,568.71	17	9,194,155.30
NEBRASKA	16	5,675,994.21	20	9,217,121.72
NEVADA	1	555,471.64	0	0.00
NEW JERSEY	0	0.00	0	0.00
NEW MEXICO	1	304,729.44	0	0.00
NEW YORK	8	4,092,945.85	4	1,462,336.53
NORTH CAROLINA	14	8,968,839.64	18	8,674,825.90
NORTH DAKOTA	32	13,596,240.75	46	18,390,670.29
OHIO	4	2,389,438.14	14	6,999,106.67
OKLAHOMA	64	36,953,456.66	35	18,629,942.99
OREGON	11	4,337,932.05	15	7,572,626.65
PENNSYLVANIA	5	1,929,190.39	2	1,303,672.00
SOUTH CAROLINA	13	7,214,630.47	6	2,599,696.16
SOUTH DAKOTA	31	11,166,827.59	18	6,603,309.26
TENNESSEE	19	8,336,966.90	7	2,842,119.93
TEXAS	16	6,915,904.68	30	14,753,298.86
UTAH	0	0.00	2	778,761.66
VERMONT	0	0.00	0	0.00
VIRGINIA	8	2,973,645.73	3	2,337,382.41
WASHINGTON	5	2,465,588.59	1	578,312.43
WEST VIRGINIA	2	789,442.28	0	0.00
WISCONSIN	16	5,290,265.97	14	5,471,864.21
WYOMING	11	4,524,022.41	5	1,704,969.12
PUERTO RICO	0	0.00	0	0.00
TOTALS	709	343,689,406.67	846	423,371,656.37

United States
Department of
Agriculture

Farmers
Home
Administration

Washington
D.C.
20250

FmHA AN No. 1949 (1924)

July 6, 1989

SUBJECT: Making Revisions to Existing Farm and Home Plans Prior to Running the Debt and Loan Restructuring System Program

TO: State Directors, District Directors and County Supervisors

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to provide guidelines when a change or revision to the Farm and Home Plan is made. The intended outcome is to assure that the borrower is aware of all revisions made to the borrower's Farm and Home Plan, PRIOR TO RUNNING THE FINAL DALR$ PROGRAM.

COMPARISON WITH PREVIOUS AN:

No previous AN has been issued on this subject.

IMPLEMENTATION RESPONSIBILITIES:

County Supervisors will not revise Farm and Home Plans unless information submitted by the borrower is not realistic and/or cannot be verified by the County Supervisor. When a revision is made, the plan must be marked "REVISION I, II or III, etc.," to reflect the latest revisions under consideration. Each revision must be dated. All revisions must be made in red ink by crossing out original data and inserting appropriate data. When there are major revisions which cannot be easily accommodated on the borrower's plan, a new Form FmHA 431-2, "Farm and Home Plan," will be completed and attached to the original plan. When the automated Farm and Home Plan is used and revisions are needed, a new printout will be provided to the borrower.

EXPIRATION DATE: June 30, 1990

FILING INSTRUCTION:
Preceding FmHA
Instruction 1924-B

FmHA Farmers Home Administration is an Equal Opportunity Lender.
Complaints of discrimination should be sent to:
Secretary of Agriculture, Washington, D.C. 20250

The revisions must reflect the borrower's current operation based on the record of past performance. The County Supervisor will meet with the borrower to discuss, date and initial the revised Farm and Home Plan.

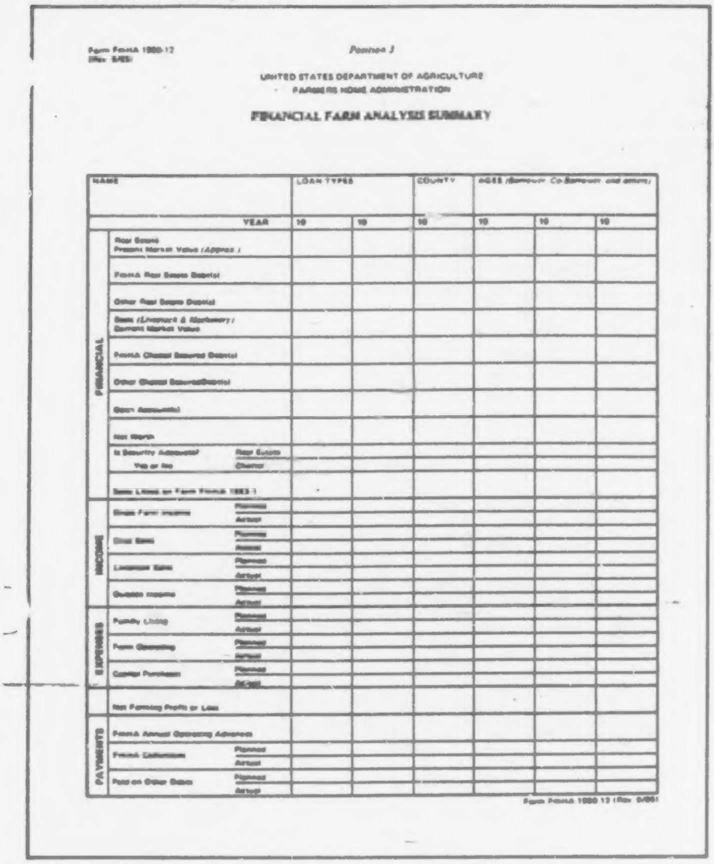
A COPY OF THE REVISED PLAN WILL BE MAILED TO THE BORROWER WITH A LETTER EXPLAINING WHY THE REVISIONS WERE MADE. THE LETTER WILL SET AN APPOINTMENT FOR THE BORROWER TO MEET WITH THE COUNTY SUPERVISOR. THE LETTER WILL BE SENT CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

If the borrower does not keep the appointment without due cause or does not agree to the revisions, the County Supervisor will continue processing the application, using the plan that is based on verified realistic information.

State Offices should direct any questions concerning this AN to Chris Amend of the Farmer Programs Loan Servicing and Property Management Division at FTS 475-5431.

NEAL SOX JOHNSON
Acting Administrator

Sent by Time Delay Option to States at 3:00pm on 7/7/89 ; to Districts at 5:00 pm on 7/7/89 ; and Counties at 10:00 am on 7/10/89 by ASD.



UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

FINANCIAL FARM ANALYSIS SUMMARY

To be used by the County Supervisor to analyze the operation of Farmer Program Loan borrowers. The information will be obtained from the "Actual" columns on Forms FmHA 431-2 and 1962-1.

FmHA form for recording 5 year record of income expenses

PROCEDURE FOR PREPARATION : FmHA Instruction 1924-B.

PREPARED BY : County Supervisor.

NUMBER OF COPIES : Original only.

SIGNATURES REQUIRED : None

DISTRIBUTION OF COPIES : Original to County Office case files.

to FmHA, and a new Form FmHA 1962-1 will be developed and completed for the upcoming year of operation prior to the expiration of the existing Form FmHA 1962-1. A list will be maintained in the Management Systems Box in the Miscellaneous division in accordance with §1905.5(d) of Subpart A of Part 1905 of this chapter (available in any FmHA office). The list will include the borrower's name, the expiration date of the form, and the date for the follow-up by the County Supervisor.

(7) Verify that the plan is consistent with the applicable highly erodible land and wetland conservation requirements of Exhibit M of Subpart G of Part 1940 of this chapter.

(d) Documentation and revision of plans. (Farm + Home Plans)

(1) Plans will be documented in sufficient detail to adequately reflect the overall condition of the operation, including the borrower's current financial condition. The borrower's projected income and expenses must be based on the borrower's proven record of production and financial management. ~~For existing farmers, actual production and financial history for the past 5 years will be utilized. For those with less than a 5 year operating history, the applicant's available production history will be used.~~ This will be determined by the actual yields taken from the applicant's reliable records or the Agricultural Stabilization and Conservation Service (ASCS) "actual yields." When an accurate projection cannot be made because the applicant's production history has been affected by a disaster(s) declared by the President or designated by the Secretary of Agriculture, and for those farmers who would have had a qualifying loss, as defined in §1945.154 (a)(29) of Subpart D of Part 1945 of this chapter, but were not located in a designated/declared disaster area, County average yields will be used for the disaster year(s). If the applicant's disaster year's(s') yields are less than the County average yield, County average yields will be used for that year(s). If County average yields are not available, State average yields will be used. For beginning farmers, the County Supervisor will consider ASCS records, for that particular farm, Extension Service (ES) data, County averages, State averages, or other reliable sources of data to develop the projections.

(2) Unit prices for all agriculture commodities produced commercially in each State will be established on a statewide basis by all FmHA State Directors each year, and published in a State supplement to be issued annually to comply with the farm planning season. State Directors may establish regional unit prices for different regions of a State when there are transportation costs and other factors that establish a regional pattern for unit prices within the State. In development of unit prices, the State Director

will consult with other agricultural agency representatives and agricultural lenders for the State and local areas before establishing commodity prices. State Directors in adjoining states will consult each other and will resolve any differences before releasing their established commodity price lists. Farmers who have proven accurate records to support a premium price for a commodity and/or contracts with well established markets will be allowed to use these prices. In addition, the supplement required in this section for commodity prices will also contain the 5-year history of disaster declarations/designations for all counties in the State, indicating the type of disaster(s) and incidence period(s). This information will be used to determine whether any particular year(s) should be considered as a disaster year for the applicant.

(3) Form FmHA 1962-1 will be revised whenever changes in the borrower's operation occur during the year. It is the borrower's responsibility to notify FmHA of any changes which occur. The Form FmHA 1962-1 will be marked "Revision" and changes noted by crossing out any original estimates and inserting new estimates immediately above. The borrower and the County Supervisor will initial and date revisions to the Form FmHA 1962-1. Also, if the changes would result in a major change in the operation, a new farm plan must be developed. If the borrower and the County Supervisor cannot agree on a revision, the borrower will be given the opportunity to appeal in accordance with Subpart B of Part 1900 and §1962.17 (a)(2) of Subpart A of Part 1962 of this chapter. The notice to the borrower must identify the items on which the County Supervisor and the borrower cannot agree and must explain why the County Supervisor does not agree with the borrower's planned use of proceeds. While any appeal is pending, FmHA must make releases which would be average for the borrower for essential family living and farm operating expenses. Those borrowers whose requests are in excess of their average essential family living and/or farm operating expenses must provide justification in writing which will be documented in the case file and if justified FmHA will approve the release. In addition, FmHA must make releases for other items on which the borrower and the County Supervisor agree. After the appeal is concluded, the County Supervisor and borrower will sign a Form FmHA 1962-1 which complies with the hearing (or any review) officer's decision. If the borrower refuses, the County Supervisor will give

United States
Department of
Agriculture

Farmers
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Administration

Washington
D.C.
20250

FmHA AN No. 1929 (1951)

May 18, 1989

SUBJECT: Guideline for the Review of Write-down and Buy Out Under FmHA Instruction 1951-S

TO: State Directors, District Directors and County Supervisors

PURPOSE/INTENDED OUTCOME:

The purpose of this Farmers Home Administration (FmHA) Administrative Notice (AN) is to provide guidance for reviewing write-down and buy out under FmHA Instruction 1951-S. The intended outcome is to ensure that these servicing actions are thoroughly reviewed by the State Director in order to reduce the large number of processing errors that have been found by the Office of the Inspector General (OIG).

COMPARISON WITH PREVIOUS AN:

No previous AN has been written on this subject.

IMPLEMENTATION RESPONSIBILITIES:

The attached checklist should be used by State Directors to review debt restructuring requests for write-down and/or buy out. State Directors may supplement this checklist to meet any special needs or requirements as a result of state laws or unique farming enterprises or conditions. If you are using a checklist, it should contain as a minimum, the items on the attached checklist.

Michael C. Wilkinson

for NEAL SOX JOHNSON
Acting Administrator

Attachment

EXPIRATION DATE: December 31, 1989

FILING INSTRUCTIONS:
Preceding FmHA
Instruction 1951-S

Farmers Home Administration is an Equal Opportunity Lender
Complaints of discrimination should be sent to:

ATTACHMENT

CHECKLIST FOR REVIEWING WRITE-DOWN AND BUY-OUT

__ 1. Check that the correct version of DALR$ was used.

__ 2. Check that real estate and chattel appraisals are current and have been fully completed.

__ 3. Compare the present market value and capitalization value. If there is more that a 5 percent difference, verify that both values have been arrived at properly.

__ 4. Check the amount and the verification of off-farm income.

__ 5. Check all basic borrower information in the DALR$ program by reviewing the Farm and Home Plan and the application.

______ 6. Review the personal financial statements of all individuals who signed the promissory notes as required in Section 1951.907(h)(1) of FmHA Instruction 1951-S if the borrower is a corporation, cooperative, partnership or joint operation.

__ 7. Check that the unpaid loan balances on all secured debts have been verified.

__ 8. Review the borrower's projected income, expenses and production to see if they are based upon actual production and financial history for the past 5 years.

__ 9. Check to see if an analysis was completed last year.

__ 10. Review the unit commodity prices used in the farm plan to determine if they comply with the annual unit prices published by the State Office.

__ 11. Check that the present value of the restructured loan is at least equal to or greater than the net recovery value of the security.

__ 12. Check that all of the loans and projected loans have been entered in DALR$.

__ 13. Check that the correct rates and terms were input into DALR$ for each promissory note.

__ 14. Check that the correct unpaid principal and interest figures were entered into DALR$ on all FmHA notes.

__ 15. Check that the interest rate is correct for each loan that is restructured.

__ 16. Review Form FmHA 1962-1, the Security Agreements and Financial Statements to verify that the chattel security has been properly accounted for.

__ 17. Check that the new real estate mortgages or Deeds of Trust secure the shared appreciation agreements and net recovery buyout recapture agreements.

United States Department of Agriculture
Farmers Home Administration
Washington D.C. 20250

FmHA AN NO. 1857 (1924)

January 27, 1989

SUBJECT: Development of Realistic Long Range Farm Budgets

TO: State Directors

ATTENTION: Farmer Programs Chiefs

PURPOSE/INTENDED OUTCOME

This Administrative Notice (AN) is issued to provide guidance on the development of realistic long range agricultural commodity prices and input costs. These prices and costs will be used for determination of farm budget feasibility following loan deferral. This information will also be used when conservation practices are required to bring the farm in compliance with the requirements in Exhibit M of FmHA Instruction 1940-G.

COMPARISON WITH PREVIOUS AN

This AN replaces AN 1751 (1924) dated April 27, 1988.

IMPLEMENTATION RESPONSIBILITIES

As before in AN 1751, projected levels of production and expense must be supported by the borrower's history. Projected income and expense should be based on the borrower's records. If the borrower does not have income and expense records, the County Supervisor will use ASCS records, Agricultural Extension Service data, county averages and/or reliable sources of data as the basis for income and expense projections.

Borrowers who intend to participate in government programs should include payments from such programs in their budget. For purposes of these calculations FmHA will assume that government programs will continue in the future similar to those currently active.

EXPIRATION DATE: January 31, 1990

Filing Instruction: Preceding FmHA Instruction 1924-B

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Each State Director must establish the average 1988 price received for each agricultural commodity by county, region or district. Exhibit B provides a national average with which states can realistically compare their developed averages. These national averages are not, however, to replace state development of commodity prices. For certain items the State Director may elect to set an average unit price for the entire state if the item shows little or no deviation across the state.

In most cases, price data is available from State Departments of Agriculture, State Offices of the USDA National Agricultural Statistics Service, or Land Grant Universities. If local data is not available, the prices that most nearly reflect local area prices must be used.

Exhibit A provides a table of projections for the percentage change of prices received and prices paid by farmers. In many cases, projected change factors are not available for unique, locally grown products such as crawfish, guava or rabbits. Local buyers, processors, Agricultural Extension Service, or similar sources should be contacted to obtain the best estimates available for such products.

Borrowers with adequate records to compute a weighted average price received for commodities sold in 1988 will have their 1988 actual unit prices used in the projection calculations. Otherwise, the average price as determined by the State Director will be used in these calculations. Similarly, production and living expenses (prices paid by farmers) will be calculated based on 1988 actual unit costs if available.

EXAMPLE: Wheat
Local avg. cash price x year % change = price adjustment
$3.70 /bu (1988) x -12.2% (1993) = - $0.4514
Price adjustment + 1988 avg. cash price = 1993 projected price
-$0.45 + $3.70 /bu = $3.25 /bu

If the State Director sees a critical need to change selected commodity projections in Exhibit A then those commodities and a detailed justification should be sent to the National Office for approval. Any changes you wish to make can be sent by Telemail to NO.PDS or by Facsimile to FTS 382-8098 or commercial (202) 382-8098 addressed to Director, Farmer Programs, Program Development Staff.

Michael C. Williams

NEAL SOX JOHNSON
for Acting Administrator

Attachments

Sent by telefacsimile on 1/27/89 at 4:01 Pm by ASD. The State Director should advise other personnel as appropriate.

FmHA AN 1857(1924)
Exhibit A

[illegible] FARM BUDGET PROJECTIONS

Source: Economic Research Service
==================================
FmHA, FP, Program Development Staff
January 14, 1989

CASH COMMODITY PRICES RECEIVED

	---------------< Projected % Change From 1988 >---------------						
COMMODITY	1989	1990	1991	1992	1993	1994	1995
---------	----	----	----	----	----	----	----
Wheat	-2.7	-6.8	-9.5	-10.8	-12.2	-13.5	-13.5
Corn	-25.0	-28.8	-30.8	-28.8	-19.2	-15.4	-19.2
Sorghum	-23.4	-27.7	-29.8	-27.7	-17.0	-17.0	-19.1
Barley	-18.5	-22.2	-25.9	-25.9	-24.1	-25.9	-25.9
Oats	-34.0	-35.8	-37.7	-37.7	-34.0	-34.0	-34.0
Soybeans	-26.5	-29.0	-29.0	-28.4	-25.8	-25.2	-25.2
Cotton	12.2	12.2	18.4	22.4	24.5	27.6	26.5
Rice	-29.2	-28.3	-27.5	-26.7	-25.8	-25.0	-23.3
SB Oil	0.0	-6.5	-8.7	-10.9	-13.0	-13.0	-13.0
SB Meal	-33.3	-33.3	-32.4	-31.4	-27.5	-26.5	-26.5
Cattle	5.1	7.9	0.4	4.2	-2.5	-5.1	-3.5
Calves	5.1	7.9	0.4	4.2	-2.5	-5.2	-3.5
Hogs	5.1	15.7	3.9	-3.2	11.0	18.1	11.0
Broilers	24.5	15.8	4.2	13.5	18.1	11.2	18.1
Turkeys	58.6	41.1	45.6	41.1	43.3	47.8	52.3
Eggs	22.5	19.9	21.6	26.8	18.2	28.5	35.3
Milk	1.1	-5.8	-9.9	-10.7	-10.7	-10.7	-14.0
Fruit	-11.9	-10.6	-8.5	-6.6	-3.5	0.0	2.2
Vegetables	8.0	11.0	14.3	17.4	20.2	22.9	25.8
TOBACCO:							
Flue-cured	-0.9	-0.2	2.2	5.3	8.4	10.9	13.4
Burley	3.1	5.6	8.1	10.6	13.8	16.3	18.8
SUGAR:							
Raw, domestic	-1.4	-0.8	-0.2	0.5	1.1	1.8	2.5
Sugarbeet	-5.9	-5.4	-4.7	-4.1	-3.4	-2.8	-2.1
Sugarcane	-6.5	-6.0	-5.4	-4.8	-4.1	-3.4	-2.6

PRODUCTION AND LIVING EXPENSES

Feed	6.6	-19.6	-23.1	-23.1	-17.4	-9.4	-9.4
Feeder Livestock	5.0	6.8	0.0	2.5	-1.1	-2.7	-1.1
Seed	5.1	6.3	3.2	1.3	1.3	5.1	9.1
Fertilizer	5.8	7.1	10.3	15.0	18.8	24.0	28.2
Ag. Chemicals	4.5	6.0	8.7	11.9	14.3	17.6	20.3
Fuels	1.2	4.7	9.9	15.5	20.9	25.9	30.6
Farm & Motor Sup.	5.1	9.2	11.4	14.5	17.3	20.0	22.1
Autos & Trucks	3.6	6.9	9.3	12.2	15.4	17.9	20.4
Tractors	5.7	10.0	13.0	15.8	18.8	21.3	23.6
Other Machinery	5.3	10.0	12.8	15.8	18.6	21.2	23.6
Bldg. & Fencing	1.6	2.8	4.2	5.5	6.8	8.0	9.2
Farm Serv. & Rent	2.0	3.8	5.7	7.4	9.1	10.7	12.3
Interest	1.0	1.0	1.0	1.0	1.0	0.0	-2.1
Taxes	1.4	2.8	4.2	6.1	8.0	9.8	11.5
Wages	4.5	10.0	15.3	20.5	25.3	29.9	34.0
Family Living (CPI)	4.1	8.3	12.2	16.1	19.7	23.0	25.8
Other Expenses	4.0	5.0	7.1	10.1	12.8	15.8	18.7

FmHA AN NO. 1657(1924)
Exhibit B

PROJECTED LONG RANGE FARM PRICES

Source: Economic Research Service
==
FmHA, FP, Program Development Staff
January 14, 1989

--------------< PROJECTED CASH COMMODITY PRICES RECEIVED >------------

COMMODITY	UNITS	1988	1989	1990	1991	1992	1993	1994	1995
Wheat	$/bu	3.70	3.60	3.45	3.35	3.30	3.25	3.20	3.20
Corn	$/bu	2.60	1.95	1.85	1.80	1.85	2.10	2.20	2.10
Sorghum	$/bu	2.35	1.80	1.70	1.65	1.70	1.95	1.95	1.90
Barley	$/bu	2.70	2.20	2.10	2.00	2.00	2.05	2.00	2.00
Oats	$/bu	2.65	1.75	1.70	1.65	1.65	1.75	1.75	1.75
Soybeans	$/bu	7.75	5.70	5.50	5.50	5.55	5.75	5.80	5.80
Cotton	$/lb	9.49	0.55	0.55	0.58	0.60	0.61	0.63	0.62
Rice	$/cwt	6.00	4.25	4.30	4.35	4.40	4.45	4.50	4.60
SB Oil	cnt/lb	23.00	23.00	21.50	21.00	20.50	0.20	0.20	0.20
SB Meal	$/ton	255.00	170.00	170.00	172.50	175.00	185.00	187.50	187.50
Cattle	$/cwt	65.85	69.19	71.08	66.13	68.61	64.23	62.46	63.52
Calves	$/cwt	79.02	83.03	85.30	79.35	82.33	77.07	74.95	76.23
Hogs	$/cwt	42.35	44.50	49.00	44.00	41.00	47.00	50.00	47.00
Broilers	cnt/lb	25.90	32.25	30.00	27.00	29.40	30.60	28.80	30.60
Turkeys	cnt/lb	31.70	50.27	44.73	46.15	44.73	45.44	46.86	48.28
Eggs	cnt/doz	50.50	61.85	60.55	61.42	64.01	59.69	64.88	68.34
Milk	$/cwt	12.21	12.35	11.50	11.00	10.90	10.90	10.90	10.50
TOBACCO:									
Flue-cured	cnt/lb	161.40	160.00	161.00	165.00	170.00	175.00	179.00	183.00
Burley	cnt/lb	160.00	165.00	169.00	173.00	177.00	182.00	186.00	190.00
SUGAR:									
Raw, domestic	cnt/lb	22.10	21.80	21.92	22.06	22.20	22.35	22.50	22.65
Sugarbeet	$/ton	38.60	36.32	36.53	36.77	37.01	37.27	37.53	37.79
Sugarcane	$/ton	29.20	27.29	27.44	27.61	27.80	28.00	28.22	28.44

U.S. Department of Agriculture,
Farmers Home Administration,
Washington, DC, August 30, 1989.

Honorable Kent Conrad,
Chairman, Subcommittee on Agricultural Credit, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Russell Senate Office Building, Washington, DC.

Dear Mr. Chairman: Enclosed please find our response to the questions submitted by Senator Boschwitz and yourself, concerning the implementation of the Agricultural Credit Act of 1987 by the Farmers Home Administration (FmHA).

If we can be of further assistance, please advise.

Sincerely,

Neal Sox Johnson,
Acting Administrator.

Enclosure.

QUESTIONS FOR FmHA SUBMITTED BY SENATOR RUDY BOSCHWITZ

Question 1. Mr. Johnson, in your written testimony you indicated that DALR$ is being modified. I am pleased to hear that the new version will tell borrowers who do not qualify for restructuring how close their financial plan is in terms of cash-flow. You also indicated that borrowers would be able to make appropriate revisions in their Farm and Home Plan and to request further runs of DALR$. Will those borrowers who are still in the pipeline, and have not come to final settlements, be able to make revisions in their plan and request additional DALR$ runs?

Answer. DALR$ will be rerun in all cases where changes in a borrower's Farm and Home Plan are justified. Most borrowers presently in the "pipeline" are engaged in either the mediation or appeals process. When an appeal results in a Farm and Home Plan change, DALR$ is rerun. In mediation, the Agency further uses DALR$ to test the effects of agreed upon changes to the borrower's plan or other creditors' offers to restructure their debts.

Question 2. The Agricultural Credit Act of 1987 created a secondary market for FmHA guaranteed loans. By statute, regulations were to have been promulgated last summer. Since the FmHA secondary market was modeled after a successful Small Business Administration secondary market for which regulations are in place, and since there was a statutory timetable for issuing regulations, it seems to me that the Department should be able to proceed expeditiously in publishing them for public comments. Would you agree? Do you know when these regulations will be published?

Answer. FmHA is working with USDA's Office of General Counsel, the Office of Management and Budget, the Small Business Administration, and other Government agencies to draft regulations that will work for FmHA programs. These regulations were submitted to OMB for review on February 16, 1989. In the process of their review, several unforeseen issues and problems emerged, such as the budget treatment of this activity under Gramm-Rudman-Hollings constraints. FmHA has effectively withdrawn the regulations from review in order to resolve these issues.

QUESTIONS FOR NEAL SOX JOHNSON SUBMITTED BY SENATOR CONRAD

1. I greatly appreciate your willingness to develop a list of frequently asked questions and their answers which will be sent to borrowers receiving the next mailing of Notices of the Availability of Loan Servicing Programs packet.

Question. Would you be willing to work with my staff and farm advocacy groups to develop this list of questions and answers?

Please provide me with the tentative schedule for preparing and mailing this information.

Answer. The Agency has recently written you to obtain the thoughts of your staff and others, including farm advocacy groups concerning the preparation of such a handout. Time has not permitted the inclusion of a handout in the current mailing. However, the Agency has begun to develop an initial list, which we expect to distribute at our September Farmer Program Chief's training and to our Field Offices by September 15. We see this as an ongoing project and plan to update this list periodically with questions from interested parties, as soon as possible after they are received.

2. I also greatly appreciated your commitment to provide additional training on the restructuring process, how DALR$ works, and the mediation and appeals proc-

ess to State, District and County FmHA staff, County Committee members and FmHA borrowers.

Question. When will this next round of training commence?

Question. Would you be willing to allow individuals and groups which work with FmHA borrowers on the restructuring and appeals process under the Agricultural Credit Act to attend these training sessions?

Question. Would you be willing to open these training sessions to the public?

Answer. Nationwide farmer informational meetings are scheduled to take place in late September on a local level. The purpose of these meetings is to discuss DALR$ and answer questions concerning FmHA's loan servicing program. While geared to FmHA borrowers, the meetings will be public, and other interested parties are welcome to attend. We will be sending letters to this year's delinquent borrowers advising them of these meetings.

Question. A number of farm advocacy groups have developed detailed knowledge of the restructuring and appeals process, and printed materials describing it. I know of few others who could provide better training on this process. Would you be willing to use these groups to provide formal training in some States to FmHA staff and the public?

Answer. We believe that there may well be times that the use and attendance of such groups at FmHA training could be helpful. For the most part, field training is administered by the State. State Directors have the authority to structure the kind and timing of their training as best meets the needs of their State. Individuals and organizations that wish to participate in State training should contact their State Director.

While States have the authority to develop their own training, for the most part, we would anticipate that the timing of the next round of training relative to Farmer Program loan servicing will be geared to the publication of final regulations.

The National Office is planning a small meeting geared to Farmer Program Chiefs in Denver, Colorado, September 12 and 13. This meeting will cover a variety of issues.

3. During our discussion of the need for additional training, you agreed to increase the amount of training provided to County Committee members on all FmHA lending programs that they are involved in.

Question. How do you plan to notify county offices of this new requirement to provide personal training of these County Committee members within 60 days of their election or appointment, and annual training thereafter?

Question. Will you make these training sessions open to the public?

Answer. FmHA Instructions call for formal orientation training for new committee members annually. Additionally, at their discretion, County Supervisors may conduct training at the start of committee meetings. Videotapes and a recently developed training aid with sections dealing with County Committees are used. Generally, the public is not invited to these kinds of training sessions.

Most of the Agency's training is administered on the State level in order to tailor training to individual needs. We are in the process of asking State Directors to assess committee members' training needs and to add an additional training session for the upcoming year.

The Agency is currently in the process of reviewing all of its training efforts and County Committee training is one of the topics under review.

4. The information prepared by the Farmers' Legal Action Group, entitled "Farm Survival Handbook," has proven to be invaluable to me and many others as we sought to understand the restructuring and appeals process. I understand that your agency even relied on its succinct and accurate description of the process.

It makes sense that a clear, concise guide to the restructuring and appeals process be included in the packets containing Notices which go to delinquent borrowers. However, it seems redundant for FmHA to use its staff resources to prepare such a guide.

Question. Would you be willing to contract with FLAG to provide these guides to borrowers receiving Notices?

Answer. We have reviewed the guides provided by FLAG and have found them to be very beneficial and we appreciate the efforts of that group to explain FmHA's procedures to our borrowers. However, there are other groups who are also active in this area and the Agency must guard against the appearance of favoritism toward one group. Additionally, it would be difficult for the Agency to ensure that material generated by outside groups are up to date at all times.

5. It has come to my attention that some County Committees meet irregularly, with little notice given to members prior to the meeting.

Question. Would you be willing to require that County Committees meet regularly, with 1 week's notice, and that an agenda be provided to each member prior to the meeting?

Answer. Due to the irregularity of receiving completed applications, the process does not always allow for regular County Committee meetings. County Supervisors are authorized to hold committee meetings as often as needed. The County Supervisor will usually want to ensure that there is enough business to warrant a meeting. Additionally, allowances must be made for emergency situations. We do agree, however, that an agenda would be helpful whenever possible and we will stress this point to our supervisors.

6. *Question.* Will you provide a list of the names and addresses of these borrowers who will receive the next round of Notices to the subcommittee?

Answer. Yes, we will provide the list as soon as we can make it available. The law allows the Agency to provide this information to congressional committees, but our interpretation of recent court decisions restricts us from providing it to others.

7. While I appreciate your efforts to reduce the size of the Notice packet that will be sent to delinquent borrowers, I am concerned that the exclusion of the regulations will cause unnecessary delays for those borrowers who need the regulations to complete their packets. I believe this problem could be avoided if your agency would establish a process which would ensure that borrowers requesting a copy of the regulations and related Administrative Notices will receive them as quickly as possible.

Question. Will you consider providing a toll-free or specific telephone number, clearly listed in the Notice packet, which borrowers may call to request a copy of the regulations and related Administrative Notices?

Answer. In response to previously expressed concerns that the package was too bulky and intimidating to borrowers, the Agency determined to exclude the regulations from subsequent mailings. The current notices have already been designed to inform the borrower that they may contact the County office for a copy of the regulations. We are working to ensure that sufficient copies of the regulations including supplemental Administrative Notices will be available in the County offices.

8. Numerous changes have been made in the DALR$ program to correct problems. I appreciate your efforts to get this program up and running, and to improve it. However, it is disturbing to me that changes were made in the program while borrowers' restructuring applications were being processed and yet borrowers who were denied primary loan servicing under previous incorrect versions of DALR$ do not have the opportunity to be reconsidered on the corrected version.

Question. Will you allow these borrowers to be reconsidered?

Question. Will you notify borrowers who have been denied primary loan servicing under previous versions of DALR$ that they may be reconsidered for restructuring on the correct version?

Answer. FmHA found two errors in DALR$. The first was detected and corrected prior to the beginning of the restructure process. The second, which affected an extremely small category of borrowers, was found early in the restructure process and the Agency instructed County offices to rerun DALR$ for borrowers in that category.

9. It is my understanding that DALR$ only develops a cash-flow plan which will ensure that the borrower can repay the debt in the year the loan is restructured, with little regard for long-term viability.

Question. Is this true? If so, why is the program not structured to consider a borrower's ability to continue repayment over a longer period of time? This would certainly reduce the probability that a borrower will again need primary loan servicing the following year.

Answer. To do this in its entirety, the Agency would have to heavily rely on projections, a difficult science at best, and one that has been severely criticized in recent oversight hearings. Therefore we rely on past production history and in some cases county yield averages to help determine future repayment ability. When warranted, such as in deferrals, limited projecting is required to determine the best year for repayment to begin. We believe that this represents a good mix, and is a methodology that has become familiar to our borrowers and employees.

10. I have heard of cases in which the cost of variables, such as the cost of holding property, in the present value calculation change between the time a borrower was rejected for primary loan servicing, and when he submitted a revised Farm and Home Plan making changes in his farming operation in order to meet the amount of repayment required to cash-flow. In one specific case, the County Supervisor reran the Plan through DALR$ and it cashed-flowed. The County Supervisor submitted the restructuring plan to the State Office for approval, only to have it reject-

ed because the cost of variables had changed in the interim and the plan no longer cash-flowed.

Question. Why are you allowing these variables to change while borrowers are in the restructuring process?

Answer. Regrettably, some States incorrectly calculated these variables, necessitating a review by State and National Office officials resulting in the revision and rerunning of the DALR$ program.

11. *Question.* Have you decided to prepare a workbook on the calculations made by DALR$ as an aid to borrowers and farm advocates, as we discussed during the hearing? Will you include this workbook in the packet containing the Notices?

Answer. The Agency is developing a DALR$ "worksheet" and handout which we hope to use during the farmer informational meetings in September. The "worksheet" is planned to "walk" a user through the loan servicing calculations by using a hypothetical borrower. It is important to note that depending upon an individual's situation, FmHA's servicing authorities could result in up to 14 combinations of servicing tools per loan, the permutations of which grow considerably with more loans. The "worksheet," while relatively simple, should serve to demonstrate the theory and complexity of debt restructuring.

12. It is my understanding that DALR$ does not automatically calculate the effect of loan deferrals of under 5 years when computing restructuring options. While there is a program available which will consider 1, 2, 3, and 4 years deferrals, apparently not all County Supervisors are knowledgeable enough about the program to use it when processing a borrower's application. Thus, there is not consistent consideration of the complete loan deferral options for all borrowers.

Question. Why doesn't DALR$ automatically consider 1–4 year deferral options?

Question. Will you revise the next version of DALR$ to automatically make these calculations?

Answer. The discretionary selection is intentional. The objective is to select the year when the borrower will be most able to begin repayment of a deferred loan. That year should be selected in concert with information provided by the borrower's plan of operation and projection of changes in income and financial situation.

13. Please provide me with a draft or outline of the information packet you have agreed to provide to creditors explaining the options they might select during mediation, including the benefits of restructuring.

Question. Will this information be included in the invitation to creditors to participate in mediation?

Answer. FmHA is currently preparing a Mediation Fact Sheet with a memorandum to FmHA personnel covering its use. When these documents have been reviewed, we will be pleased to comply with your request. We expect to distribute these within the next 30 days.

In addition, the Agency is developing two general information mediation brochures. One geared to States with certified programs and one geared to States without. The brochures will be available to borrowers, their creditors, FmHA and other Government agency personnel as soon as possible.

14. I think that you will agree that mediation can be very beneficial to FmHA by allowing borrowers to develop a feasible plan which includes repayment of debt to FmHA and other creditors.

Question. Has FmHA actively pushed for the establishment of State mediation programs in States where they do not exist?

Answer. The Agency has encouraged State established mediation programs. Last year, 16 States were certified and nearly all grant moneys were used. To date, no States have been rejected, the original 16 have been recertified for the coming year, and we expect to certify more as applications are received. The program was originally promoted via certified letters to all Governors. In States which have no certified program, FmHA contracts with either the Federal Mediation and Conciliation Service or qualified private mediators. In order to identify qualified mediators, FmHA is developing a nationwide roster from which to solicit contracts. A full-time employee is based in FmHA's National Office to coordinate the promotion and management of this program.

15. I understand that unsecured debt is considered due and payable immediately when a borrower is considered for restructuring. This can be very difficult for some borrowers.

Question. Would you consider allowing the borrower a minimum of 45 days to work out the financing of this payment?

Answer. Unsecured debt is not considered due and payable immediately when a borrower is considered for restructuring unless those are the terms of the debt, as in the case of supplier debt. Borrowers already have a significant amount of time to renegotiate that debt if they can, prior to the Agency making its restructure decision. The Agency will use any valid repayment plan for the purpose of calculating its loan servicing decisions. However, if they are unable to do so prior to the Agency's loan servicing decision, the subsequent mediation process is specifically designed to resolve issues such as this.

16. Borrowers are allowed 45 days to arrange the financing of a net recovery buyout. I know in many instances, this is a very short timeframe.

Question. What are your views on the possibility of legislatively expanding that period to 90 days?

Answer. FmHA agrees that 45 days is not always enough time and the Agency has submitted a legislative proposal to the Department to extend the time.

17. Based on the subcommittee's request, you have instructed County Supervisors to notify borrowers of any changes the County Supervisor makes on the Farm and Home Plan submitted by the borrower, and mark the Plan "revised."

Question. Does this policy apply to cases in which the County Supervisor does not believe the Plan submitted by the borrower is accurate and develops a new Plan?

Answer. Yes, in this case the new plan is marked "revised" and sent to the borrower who then has the opportunity to meet with the County Supervisor to discuss the changes.

18. I was very pleased by your Administrative Notice which reminded County Supervisors to notify borrowers of the continuation policy. However, I am hearing reports that this information is still not getting to borrowers.

Question. Would you be willing to include a notice of the continuation policy and the fact that borrowers can appeal adverse decision relating to these loans in future Notices of Availability of Loan Servicing Programs?

Answer. Such a notice is unnecessary since FmHA regulations already require that applications from delinquent borrowers for operating credit be automatically considered under the Agency's Distressed Farmer Operating Loan authority. If you are aware of specific cases where this was not done, we would appreciate being advised so that appropriate action can be taken.

19. I am concerned about the number of borrowers who are 180-days delinquent and will receive Notices this fall. I am sure that the drought last year is one of the causes of the delinquencies. Yet your agency has the authority to provide several phases of loan servicing, including rescheduling, reamortization, and consolidation of troubled loans, before a borrower becomes 180 days delinquent. Congress stressed the need for this type of assistance when it included credit forbearance provisions in the 1988 Disaster Assistance Act.

Question. Has FmHA provided this forbearance?

Question. Are County Supervisors employing the servicing phases I've just described?

Question. How many of the borrowers who will receive the next round of Notices have been provided this type of loan servicing on their delinquent loans?

Answer. FmHA agrees that the sooner a delinquency is cured or prevented, the better it is for all concerned. Because of this, our regulations require that delinquent borrowers be contacted after they are 30 days delinquent. The servicing authorities, including debt-writedown, are the same here as if the borrower were 180 days delinquent. In exercising forbearance, the Agency has reduced its delinquencies from some 33,000 to 13,000 since the beginning of the year.

20. You are issuing proposed regulations which will allow previous owners who are going to repurchase property the choice of whether to accept or remove the conservation easements placed on their land. It is my hope that these regulations will resolve many of the objections to the placing of conservation easements on inventory property.

Question. Will this change apply retroactively? If not, why?

Question. Will all previous owners be allowed this choice, both those who receive FmHA financing for the purchase and those who have another source of credit or pay cash?

Answer. As you are aware, FmHA is sensitive to the needs of prior owners exercising their preservation rights. The Agency first considered a regulatory change, but has postponed publishing this action, as we are also considering other ways of addressing the issue.

The provisions of Executive Orders 11988 and 11990 imply an affirmative responsibility on FmHA to protect wetlands and flood plains which come into inventory. There is a limited ability, however, to modify the conservation recommendations, through negotiations between FmHA, the U.S. Fish and Wildlife Service (FWS) and the buyer. Generally, negotiations center around acreage which has been converted or altered for farming, as opposed to existing wetlands. Buffer zones and access to water are typical of those items which can be negotiated. Prior owners presently exercising their rights are being handled in this manner.

The sale price of inventory property is adjusted accordingly when deed restrictions are required. This adjustment can be advantageous to prior owners, who might otherwise be unable to qualify at the higher price.

FmHA is continuing discussions with FWS and the Office of Management and Budget in an effort to further develop these policies to achieve the proper balance.

21. *Question.* Is it FmHA's belief that the right of first refusal for the repurchase of inventory property is exhausted if the previous owner has exercised a leaseback/buyback option at some past date, including prior to January 6, 1988, the date the Ag Credit Act was enacted?

Question. If so, it appears that you are not implementing Congress' intended use of the priority list for the sale of inventory property in this case. How do you explain this discrepancy?

Question. Would this policy also prohibit a borrower from exercising his right to choose whether to purchase the inventory property with or without easements, under the regulations proposed by FmHA?

Answer. The Agricultural Credit Act of 1987 expanded leaseback/buyback and homestead retention rights. The act specifically required FmHA to offer homestead retention retroactively, but failed to do so with leaseback/buyback. The Agency has no legal authority to unilaterally create retroactive rights.

As mentioned in the answer to question 20, action on a proposed rule regarding conservation easements and preservation rights has been postponed for the reasons outlined.

22. *Question.* How do conservation easements placed on land purchased in a net recovery buyout affect the subsequent recapture value calculation which is based on the net recovery value?

Answer. No land is purchased at net recovery buyout, since the borrower already has title even though it may be subject to liens. The loan is purchased by the borrower for this amount, and since no title passes, easements are not a factor. There may be cases where conservation easements in exchange for debt relief have been used and the borrower then utilizes net recovery buyout at a future date. Recapture is geared to the appraised value of the property. An existing easement lowers the value and would therefore work to the advantage of the farmer relative to recapture.

23. FmHA regulations provide that when rescheduling a loan, the interest rate will be the lower of the loan's original rate or the current interest rate. Borrowers may have previously rescheduled the loan at a rate of interest lower than either the original rate or the current rate.

Question. In this situation, is it possible that the borrower's payment on the newly restructured loan will be greater than his current payment?

Question. The delinquent borrower will clearly not benefit from the Agricultural Credit Act in this case. What are your views on allowing the loan to be rescheduled at the lower of the borrower's original interest rate, his present interest rate of the loan, or the current interest rate?

Answer. While we are reluctant to say that a restructured payment will never be greater than the previous payment, such an occurrence would be extremely rare. In some cases, a rescheduled interest rate could be higher than the current rate (as in the case of limited resource rates), however, the rescheduling should provide lower payments. FmHA's regulations on this matter are governed by statute, a change as you suggest would require legislation.

24. *Question.* It is my understanding that FmHA's use of the 90-day Treasury bill rate to calculate present value results in fewer borrowers qualifying for restructuring. This phenomenon occurs when a borrower has delinquent loans which are at a lower interest rate, such as the limited resource rate, and the present value of the loans is less if the T-bill rate is used in the calculation.

Question. Is my understanding correct?

Question. I also understand that the Agricultural Credit Act does not require FmHA to use this rate, but limits the maximum interest rate used for calculating present value to the T-bill rate. Would you consider using the lower of the borrower's current interest rate or the T-bill rate when calculating present value?

Answer. FmHA believes that the use of this T-bill rate is consistent with the intent of Congress that the Agency's decisions be based on the best net recovery. This approach provides consistency as we work with our borrowers.

25. *Question.* Can a delinquent borrower qualify for and receive an operating loan during the time he is applying for or appealing the denial of a restructuring request prior to final acceptance or rejection of the restructuring application?

Answer. Yes, such borrowers would be considered for a Distressed Farmer Operating (continuation) Loan to use for its authorized purposes.

26. *Question.* It is my understanding that borrowers may appeal any adverse decision. How do you determine which issues may be appealed?

Answer. Generally, any adverse program decision is appealable. However, certain adverse decisions are based on clear statutory or regulatory requirements and are not appealable. Examples are a denial of a section 504 Housing grant to an applicant less than 62 years of age; denial of a loan in an ineligible area; and denial of an emergency loan because the applicant did not have the required production losses. FmHA's appeal regulations contain these and other examples.

Even though FmHA may advise an applicant that a decision is not appealable, the person may request a review of that determination from the National Appeals Staff. It is the responsibility of the National Appeals Staff to decide if the determination was correct and either schedule a hearing on the issue or notify the applicant why the decision is not appealable.

27. It is my understanding that the calculation used to determine the amount a borrower owes FmHA in a recapture agreement after the sale or transfer of the property which involves a gain does not take into account prior liens. For example, if a borrower voluntarily conveys property to another creditor within 2 years of signing a recapture agreement, FmHA claims that he owes the agency the difference between the net recovery buyout value of that property and its fair market value, even though the borrower has not received any money for the land.

Question. Would you explain the rationale behind this policy?

Answer. Under the existing agreement, recapture is triggered by any conveyance of real estate security for more than net recovery value if a gain is realized by the borrower without regard to prior liens. In the few cases that we are aware of, however, the Agency has allowed modifications to the agreement in order to take prior liens into account. We plan to revise the agreement by final rule to recognize prior liens in a manner that will prevent the scenario that you cite.

28. *Question.* On another recapture agreement issue, if the previous owner dies and the property is transferred to the spouse, is the recapture agreement triggered? In other words, is it FmHA policy that the spouse or the previous owner's estate owes FmHA the difference between the buyout value and the fair market value?

Question. It is my understanding that this type of transfer does not trigger the shared appreciation agreement. How do you account for the difference in these policies?

Answer. While we are unaware of any such instances, under current regulations, the scenario you suggest could possibly trigger recapture. However, in the final regulations, to be published, we plan to modify the net recovery buyout recapture agreement to clearly exempt this type of conveyance from triggering recapture.

29. I understand that a number of borrowers who are appealing the denial of their application for a guaranteed loan under Subtitle B of Title III of the Disaster Assistance Act of 1988 are still in the appeals process.

Question. What is the deadline for applying for loan guarantees under this program?

Question. Will you extend this deadline for those borrowers who will win their appeal?

Answer. The deadline for a completed application is 8 months from the date of a disaster declaration. Borrowers who become eligible for assistance as a result of appeal will receive the guarantee at the conclusion of the appeals process, even if the appeal is after the application deadline, provided it is determined that the application was filed on time.

30. The act allowed Farm Credit System institutions to reduce their borrower stock requirements from 5 percent of the loan amount to 2 percent or $1,000, whichever is less. Some FCS institutions have reduced their stock requirements and have allowed existing borrowers to convert to the lower stock levels. In some cases, FmHA may be in the second lien position with these borrowers and the agency may have received an assignment of beneficial interest on that stock.

Now borrowers are seeking to convert to the lower stock level. Yet in at least one State, FmHA is not approving any conversions. This is preventing some loan restructuring plans from being approved. I understand your office is looking into stock conversions.

Question. What are your concerns and what is the agency's position on this issue? I understand one concern is that the converted stock will be "at risk" rather than protected. However, on all loans made prior to the act, the stock would have been at risk when the assignment was made to FmHA in the first place. It was at risk then, and it would be at risk now after conversion. Therefore, this should not be a factor.

I encourage you to move quickly to adopt a policy which allows conversions and provides the maximum reasonable flexibility for those borrowers.

Answer. FmHA has completed a review of the impact the conversion of Farm Credit System (FCS) stock will have on FmHA's loan security positions. We have been in contact with FCS representatives regarding the Minimum Stock Program and they have been most helpful in responding to the Agency's questions and concerns.

A borrower must obtain written authorization from FmHA in order to convert FCS stock which has been assigned to the Agency. FCS then forwards a copy of the borrower's refund option and release form for FmHA to review. Requests are reviewed on a case-by-case basis. The Agency reviews the refund option chosen, the borrower's financial condition, and our security position. FmHA will approve stock conversion when the refund is applied to our or the FLB's debt.

31. *Question.* What is the status of your agency's review of the 110 percent cashflow requirement included in your January 13 regulations on the guaranteed loan program?

Answer. The Agency is continuing to review this issue. As part of this review, we have surveyed all 1988 Guaranteed Operating Loans. This, along with other guaranteed loan program issues, are a part of ongoing discussions with the farm credit lending community. At this time, no decision to change the present requirement has been reached.

QUESTIONS FOR PAM DILLON SUBMITTED BY SENATOR CONRAD

Question 1. What has been the turnover of appeals officers since the establishment of the National Appeals Staff?

Answer. Since the establishment of the National Appeals Staff on July 12, 1988, three hearing officers and one review officer resigned for personal reasons and one hearing officer passed away. We currently have 53 hearing officers, with another 19 in the process of being selected and we have 9 review officers.

Question. Do you on occasion bring in hearing officers from other States or regions to hear cases? Why?

Answer. Yes. The locations of the hearing officers were determined before the existence of the National Appeals Staff based on historical data. However, appeals requested during the past year have not necessarily come at the same frequency for every location. In order to meet the statutory timeframes for conducting the hearings and to assure equality of workloads among hearing officers, we have assigned cases to hearing officers outside the States where they are located.

Question. Prior to an appeal hearing, can a borrower request another hearing officer to hear his case if the hearing officer appointed has heard the case previously?

Answer. While possible, it is not likely that a request for a new hearing officer would be granted because the assigned officer has heard a previous case on another issue with the same borrower. The reason is that we may not have another hearing officer available. Additionally, there are several opportunities for appeal under the primary and preservation loan servicing regulations and we anticipate several appeals from some borrowers. We would be unable to efficiently assign and conduct hearings if borrowers were permitted to choose among hearing officers from around the country. Borrowers do have subsequent review rights if they should disagree with a hearing officer's decision.

Hearing officers who have had a previous association with a borrower's case, such as former FmHA program personnel, attorneys, etc., are not assigned hearings with those borrowers.

U.S. Department of Agriculture,
Farmers Home Administration,
Washington, DC.

Honorable Kent Conrad,
Chairman, Subcommittee on Agricultural Credit, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Russell Senate Office Building, Washington, DC.

Dear Mr. Chairman: Enclosed please find the Farmers Home Administration's answers to the questions asked by Senator Daschle at the August 1 hearing of the committee.

Sincerely,

Neal Sox Johnson,
Acting Administrator.

Enclosure.

QUESTIONS SUBMITTED BY SENATOR TOM DASCHLE, OVERSIGHT ON FARMERS HOME ADMINISTRATION, AUGUST 1, 1989

Question 1. Why are there variances in how the DALR$ program is used to calculate net recovery value variations from State to State? How are these values determined and what effect does this have on the number of net recovery buyouts offered in each State? Example:

	South Dakota	North Dakota	Minnesota
Holding period	24 months	26.4 months	30 months.
Appreciation	5 percent per year	0 percent per year	3 percent per year.

Answer. The Agricultural Credit Act of 1987 requires FmHA to take in to account in offering net recovery buyout, liquidation costs associated with a property. Costs such as the average holding period, local and State taxes and laws governing such things as redemption rights are all variables in developing a net recovery value. Because costs vary from State to State, the Agency more accurately carries out this provision of the act by using costs developed on a State basis. For example, a State with a stronger economy may have a shorter holding period for our inventory property.

The State FmHA office determines these costs, reviews them annually, and updates them accordingly. The number of net recovery buyouts completed depends on the individual repayment ability of borrowers.

Question 2. In South Dakota, 65 percent of the decisions were upheld by the National Appeals Staff, compared to almost 74 percent in the Western Region, what does that say about the independence of the system? In your opinion, given those odds, is there a good reason for borrowers to appeal decisions?

Answer. As the law and regulations direct, the National Appeals Staff is independent from FmHA State and local officials. Each appeal hearing decision is based on the individual circumstances of that particular case and whether the FmHA adverse decision was supported by the facts and applicable laws and regulations. The figures you quote are the results of numerous factors but do reflect the independence of the appeals process. FmHA has no policy relative to an acceptable or unacceptable ratio of upheld to reversed decisions.

Any applicant for assistance who believes the FmHA adverse decision is erroneous should consider exercising their appeal rights regardless of Agency numbers. They are assured of an impartial hearing as well as two subsequent opportunities for a hearing decision to be reviewed.

Question 3. While I am appreciative that an AN notice was sent to county offices on July 17, 1989, to clarify FmHA's participation in mediation, it is not clear to me whether appraisals are appealable. Since the notice says "appraisal values will not be negotiated in mediation,"—but goes on to say that "full consideration will be given using appraisals prepared by qualified appraisers . . .", it could be interpreted that some appraisals are appealable. Please clarify if appraisals are appealable, and if so, under what conditions. I have a copy of your response to my question and Chairman Conrad's regarding appraisals. Given the diverse responses to this question, I urge you to issue a clarification to the field offices since borrowers in one county have been told something different than borrowers in a different county.

Answer. Regardless of mediation, all appraisals are appealable and there are no conditions limiting the applicant's rights in this area. For appraisals, except those which are made in connection with Farmer Program loan write-down requests, the applicant or borrower must request a review of the appraisal by the State Director before an appeal. However, if the State Director's review does not resolve the matter, the applicant is afforded appeal rights and the matter will be handled by the National Appeals Staff. Appraisals involving Farmer Program primary loan servicing may be appealed directly to the National Appeals Staff. In addition, applicants for loan servicing, can, as a part of the appeal process, ask for an independent appraisal at their expense.

In mediation, there is a difference between negotiation and consideration of appraisals. Negotiation (for example: splitting the difference between two appraisals) is not permitted. However, our Supervisors are instructed to consider other appraisals submitted during mediation and could agree to accept a different appraisal provided such appraisal is the most accurate given the comparables and documentation provided. The borrower still has the appeal rights outlined above if they are not pleased with the results of mediation. FmHA initiates mediation before the appeals process comes into play, i.e., before FmHA initially rejects the borrower for Primary Loan Servicing. Only if mediation is not successful will FmHA reject the borrower's request. This rejection, including any disputed appraisal is appealable.

Whether in mediation, an appeal hearing, or at any other time, challenges to appraisals should be based on specifics, such as: errors in computations; errors in the value determination methodologies of cost, income/capitalization, and market data approaches; or the appraisers credentials. The appraised value should be the result of recognized methodologies and practices as opposed to general thoughts or a desired result.

The Administrative Notice to which you referred is limited to providing our field offices guidance on handling issues including appraisals during mediation. There are additional instructions which cover the appeal of appraisals in and of themselves.

Question 4. In response to previous questions I submitted regarding conservation easement, I was assured that regulations to permit the former owner an option to lease or purchase the property without deed restrictions would be proposed in July 1989 with a 60-day comment period. When will these regulations be issued? Do you foresee any other problems with other agencies such as OMB or Fish and Wildlife in order to publish these regulations in a timely manner? In addition, how much land will be sold prior to the final regulations being implemented? Will the proposed regulations be interim regulations so as to enable them to be implemented sooner?

Answer. Under current regulations, inventory properties sold to anyone must contain deed restrictions to protect flood plains and wetlands, pursuant to Executive Orders 11988 and 11990. However, FmHA is sensitive to the needs of those who are exercising leaseback/buyback rights. The Agency is in consultation with the Office of Management and Budget, the U.S. Fish and Wildlife Service (FWS), and others. We hope to reach a consensus and ability to move forward in the near future.

It would be difficult to estimate how much land would be sold prior to any regulatory change as prior owner's rights do last for some time. There is a limited ability to modify the conservation recommendations through negotiation between FmHA, FWS and the buyer. Prior owners presently exercising their rights are being handled in this manner.

Question 5. What authority does FmHA have to not allow deed restrictions to be appealable? Is this by statute or by regulation?

Answer. The statute and FmHA regulations state that only adverse decisions by FmHA are appealable. Since FmHA is the owner of the land and is required by executive orders and statutes to sell it under certain environmental restrictions, there is no adverse decision regarding easements by FmHA against an applicant for lease or purchase of the farm.

Question 6. Under FmHA's current appraisal guidelines it appears that productivity values are not factored into the calculations. The 1985 Food Security Act requires the use of productivity values when selling inventory land. Please indicate what specific factors are specifically used in the appraisals of inventory property? In addition, since there is little uniformity on what is actually being used in the calculations, please indicate what the differences are between rental value capitalized and productivity values under the Departments definitions.

Answer. FmHA current appraisal regulations do consider productivity values as a factor in the determination of market value. The Capitalization Approach is a measure of the productive value, or earnings value, of the subject property. Rent paid for a farm is a good indicator of its productivity value. Land that will produce a higher net return to the operator will typically rent and likewise sell for more than less productive land. Therefore, rental values and productivity values of farms have the same implications based on the property's use, past, present and anticipated.

Question 7. Would you consider redoing appraisals that were done without the owner knowing of the appraisal, if the borrower requests this action?

Answer. FmHA appraisals are normally done with the knowledge of the borrower since the appraiser must make arrangements to visually inspect the farm and each of the farm buildings, including the dwelling, if there are improvements on the property. Borrowers do have the right to appeal appraisals if they feel that something has been overlooked or has been done improperly.

Question 8. Under the current procedures, FmHA is not offering right of first refusal if the borrower had been offered leaseback/buyback prior to January 6, 1989. Why are these borrowers being denied rights under the Agricultural Credit Act of 1987?

Answer. The Agricultural Credit Act of 1987 expanded leaseback/buyback and homestead retention rights. The act specifically required FmHA to offer homestead retention retroactively, but failed to do so with leaseback/buyback. The Agency has no legal authority to unilaterally create retroactive rights.

Question 9. I have submitted a copy of the price list that is used in the DALR$ program. Please indicate for the record exactly when these prices are used and what impact changing these numbers would have on the number of borrowers eligible for restructuring.

Answer. These prices you submitted are used in developing a long range Farm and Home Plan for deferrals. While most of the Farm and Home Plan is based on a borrower's historical information, the use of projections is required in order to determine when repayment of deferred debt should begin. State Offices are provided this price list which is prepared annually by USDA's Economic Research Service. The higher the forecast, the greater the use of deferrals. Lower forecasts would result in the greater use of debt write-down. The use of the prices you submitted does not affect eligibility for restructuring. Prices used for developing annual Farm and Home Plans (no deferrals) are determined by each State Director in consultation with other lenders and extension service economists.

Question 10. The law specifically states that FmHA must "select from among qualified applicants the applicant who had the greatest need for farm income," please indicate how this is determined when several buyers are trying to purchase inventory land. In addition, can members on the County Commission, be eligible to purchase inventory land, or do they have to resign from their position?

Answer. Currently, this judgment is left to the members of the County Committee and is appealable. It is important for the applicant to submit adequate information for the County Committee to have an understanding of the applicants needs. FmHA is working on an Administrative Notice which will give committee members guidance in making this determination. However, some Members of Congress have suggested changing the current law to a more objective method.

County Committee members can purchase FmHA inventory property, however, they must recuse themselves from any FmHA deliberations concerning the transaction.

Question 11. Please indicate for the record, how much money is available for farm ownership loans in the national pool?

Answer. As of September 15, the National Office direct farm ownership loan pool is approximately $500,000. However, nationally, some $442 million in guarantee farm ownership money is still available.

Question 12. I am encouraged that FmHA will be sending smaller packets of information in the next round of notices. I would strongly encourage you to consider the 45 days as working rather than calendar days. What legal authority does FmHA have to regard them as calendar rather than working days? If there is no legal authority to consider them as anything except calendar days, would you support legislation to clarify further that they should be considered working days?

Answer. The act requires borrowers to respond within "45 days" as opposed to 45 working days. All of the Agency's deadlines are presently based on calendar days. FmHA would have no objection to a change, but would recommend a change to increase the number of "days" as opposed to "working days." Additionally, the Agency would be interested in a similar extension for our 60-day response time. Under our rule of reason policy, we sometimes find it difficult to respond within 60 days when borrowers are delayed in providing information that we need.

Question 13. Could you indicate how right of first refusal works regarding relatives other than sons or daughters? Do first cousins have right of first refusal?

Answer. The statute specifically provides these rights to spouses, children if actively engaged in farming and prior operators. By themselves, first cousins have no priority rights.

[Material supplied by Neal Sox Johnson and Pam Dillon follows:]

Notice of the Availability of Loan Service Programs For Delinquent Farm Borrowers

Dear

This notice is to inform you that you are seriously behind with your loan payments and to inform you of your options. Farmers who are more than 180 days late in making payments have several options.

I. Loan Service Programs Available

Primary loan service programs are intended to help change the debt so that you can continue farming and the FmHA will lose less on the money it loaned you.

Preservation loan service programs are intended to help farmers who may lose their land to FmHA to get their farmland and their home back through a lease with an option to buy.

II. Application Information

Time Limits

You must notify FmHA within **45 days** of getting this notice if you want these loan service programs.

How to Apply

Complete and return **all** the forms you get with this notice, including the signed Borrower Acknowledgement of the Notice of Availability of Primary and Preservation Loan Service Programs, within the 45-day time limit.

How Soon Will You Know if You Qualify

FmHA has 60 days to process your completed forms and let you know if you qualify.

Included With This Notice You Will Find:

1) A summary of primary loan service programs options
2) A summary of preservation loan service programs
3) Copies of the forms you need to apply for services
4) Information on how to get copies of FmHA regulations
5) A description of the FmHA appeals process.

III. Foreclosure and Liquidation

What Happens if You Do Not Apply Within 45 Days?

FmHA will take steps to begin the acceleration of your loan. Acceleration of your loan is very severe. This means FmHA will take legal action to collect all the money you owe them.

FmHA will start foreclosure proceedings. They will repossess or take legal action to take any real estate, personal property, crops,livestock, equipment, or any other assets in which FmHA has a security interest. FmHA will also stop allowing you to use your crop, livestock, and milk checks to pay living and operating expenses. FmHA may also take by *administrative offset* money which other federal agencies owe you.

Sincerely,

County Supervisor
Farmers Home Administration
United States Department of Agriculture

CONTENTS OF LOAN SERVICING APPLICATION PACKAGE

1. Contents of Loan Servicing Application Package.

2. Sheet - How to Complete Your Application.

3. Attachment 1 of Exhibit A of 1951-S - PRIMARY AND PRESERVATION SERVICE PROGRAMS PURPOSE.

4. Attachment 2 of Exhibit A of 1951-S - ACKNOWLEDGEMENT OF NOTICE OF PROGRAM AVAILABILITY or Attachment 3 of Exhibit A of 1951-S - NOTICE TO BORROWERS WITH NON-MONETARY DEFAULTS AND DELINQUENCY, OR THAT A PRIOR LIENHOLDER OR JUNIOR LIENHOLDER IS FORECLOSING AND Attachment 4 of Exhibit of 1951-S - RESPONSE TO NOTICE INFORMING ME OF FMHA'S INTENT TO ACCELERATE MY LOAN.

5. Form FmHA 410-1 - APPLICATION FOR FMHA SERVICES.

6. Form FmHA 410-9 - STATEMENT REQUIRED BY THE PRIVACY ACT.

7. Form FmHA 431-2 - FARM AND HOME PLAN.

8. Form FmHA 440-32 - REQUEST FOR STATEMENT OF DEBTS AND COLLATERAL (5 copies).

9. Form FmHA 1910-5 - REQUEST FOR VERIFICATION OF EMPLOYMENT (2 copies).

10. Form FmHA 1960-12 - FINANCIAL FARM ANALYSIS SUMMARY.

!!READ!! IMPORTANT !!READ!!

HOW TO COMPLETE YOUR APPLICATION

THE ENCLOSED ATTACHMENTS CONTAIN IMPORTANT INFORMATION. READ CAREFULLY AND COMPLETE THE ATTACHED DOCUMENTS FOR YOUR PRELIMINARY APPLICATION FOR DEBT RESTRUCTURING. PLEASE BE REMINDED THAT FmHA MUST HAVE YOUR PRELIMINARY APPLICATION WITHIN 45 DAYS AND THE COMPLETED APPLICATION AS SOON AS POSSIBLE, BUT NO LATER THAN 60 DAYS FROM THE DATE YOU SUBMITTED YOUR PRELIMINARY APPLICATION IN ORDER FOR THE FARMERS HOME ADMINISTRATION TO PROCESS AND MAKE A DECISION ON YOUR REQUEST.

YOUR APPLICATION MUST, AS A MINIMUM, INCLUDE ALL OF THE FOLLOWING:

PRELIMINARY APPLICATION

1. An Attachment 2 or Attachment 4 of Exhibit A of FmHA Instruction 1951-S. If you are in monetary default, you should insert the date this letter was received, then sign and date Attachment 2 of Exhibit A. If you are in non-monetary default you will receive Attachments 3 and 4 of Exhibit A instead of Attachment 2. In this case you should complete Attachment 4 by printing your name and address as indicated, check the appropriate blocks, insert your phone number, then sign and date it.

2. A completed and signed Form FmHA 410-1, "Application for

FmHA Services." Fill in all blanks with the required information, complete the financial statement, then sign and date the form.

3. A signed Form FmHA 410-9, "Statement Required by the Privacy Act." Read, sign and date the form.

4. Farm and Home Plans. A completed, signed and dated Farm and Home Plan is required for a preliminary application. If you are farming in 1989 and have a Farm and Home Plan on file with your local County Office, you do not need to submit another Farm and Home Plan with your application unless you have completed the 1989 farming season.

   If you have completed the 1989 farming season, you will need to submit a Farm and Home Plan for the 1990 farming season. If you have not completed the 1989 farming season, you will need to submit a plan for the 1990 farming season as soon as you close out your 1989 farming season. FmHA will need a plan for 1990 before your application for loan servicing can be completed. Please contact your local FmHA County Office if you need assistance in developing your Farm and Home Plan.

THE ABOVE FORMS MAKE UP YOUR PRELIMINARY APPLICATION. THEY MUST BE COMPLETED, SIGNED, AND RETURNED TO YOUR

LOCAL FmHA COUNTY OFFICE NO LATER THAN 45 DAYS FROM THE DATE YOU RECEIVED THE FORMS.

* *

COMPLETE APPLICATION

You will also need to submit or have on file with FmHA The following information in order to have a complete application. This information is needed before FmHA can process your request. Failure to provide this information within 60 days after submission of your preliminary applications may result in denial of your request due to an incomplete application.

1. Form FmHA 440-32, Request for Statement of Debts and Collateral. You should complete a Form FmHA 440-32 for each creditor listed on your financial statement. To complete this form, just write or type in the creditor's name and address, then sign and date it. Return the appropriate number of signed forms to your local FmHA Office and we will mail them to your creditors for completion, or if you wish you may deliver the forms directly to your creditors with instructions that the forms be completed and returned to your local FmHA Office. Additional forms are available at your local FmHA Office and will be provided upon your request.

2. Agricultural Stabilization and Conservation Service (ASCS) Photo of your farm. If you are requesting a conservation easement you will have to provide FmHA with an ASCS photo of your farm delineating the area and estimating acres for the easement. These photos are available at your local ASCS Office.

3. History of production for crops, livestock and livestock products for the last 5 years. If you have actual yields from reliable records of production of crops, livestock and livestock records for your farming operation for the last 5 years you must provide this history to your local FmHA Office if they are not already on file.

4. History of income and expenses for the last 5 years. You may submit the income and expense information on the attached Form FmHA 1960-12, Financial Farm Analysis Summary or other work sheet that you may have available. Leave the line for "planned" blank and insert "not farming" for any years you did not farm. You only need to complete the sections labeled income and expenses located near on the bottom of the form.

5. A completed and signed Form FmHA 1910-5, Request for Verification of Employment. You will need to complete this form if you or your spouse are employed off the

form. Deliver the signed form to your employer and request the employer to return the completed form directly to your local FmHA Office.

6. Form AD 1026 and Form SCS-CPA-026. If you do not have Form SCS-CPA-026, Highly Erodible Land and Wetland Conservation Determination, and Form AD 1026, Highly Erodible Land and Wetland Conservation Certification, on file with FmHA you will need to contact ASCS and SCS to obtain these completed forms for your FmHA file.

REMEMBER THAT IT IS VERY IMPORTANT TO SUBMIT YOUR APPLICATION WITHIN THE REQUIRED TIMEFRAME. YOU SHOULD CONTACT YOUR LOCAL FmHA OFFICE IF YOU HAVE ANY QUESTIONS.

FmHA Instruction 1951-S
Exhibit A to Subpart S
Attachment 1
Page 1

PRIMARY AND PRESERVATION LOAN SERVICE PROGRAMS PURPOSE

Purpose

These loan service programs are to help you repay the loan and keep your farm property. This notice tells you:

1) How to get more information
2) How to apply
3) Your appeal rights if you apply and are turned down

How to Get More Information

Ask at any county FmHA office for copies of the FmHA rules describing these programs. These rules must be given to you within 10 days.

Who Can Apply?

All **"farmer program borrowers"** who have one of the following loans:

- Operating (OL)
- Farm Ownership (FO)
- Emergency (EM)
- Economic Emergency (EE)
- Soil and Water (SW)
- Recreation
- Special Livestock
- Rural Housing Loans made for farm service buildings
- Economic Opportunity

You May Need Help in Applying.

The legal requirements for these programs are very complicated. You may need help to understand them. You may want to ask an attorney to help you. If you cannot get an attorney, there are organizations that give free or low-cost advice to farmers. Ask your State Department of Agriculture or the USDA Extension what services are available in your state.

NOTE: FmHA County Supervisors cannot recommend a particular attorney or organization.

I. Primary Loan Service Programs

1) Loan Consolidation

Two or more of the *same type* of loans can be combined into one larger loan. For example, operating loans can only be joined with operating loans and farm ownership loans with farm ownership loans.

2) Loan Rescheduling

The payment schedule can be altered to give you longer to repay loans secured by equipment, livestock, or crops. For example, the time for repayment of an operating-type loan can be extended up to 15 years. When a loan is rescheduled, the interest rate may be reduced.

3) Loan Reamortization

The payment schedule can be changed to give you longer to repay loans secured by real estate. For example, a Farm Ownership loan payback period may be extended to 40 years from the date the original loan was signed. When a loan is reamortized, the interest rate may be reduced.

4) Interest Rate Reduction

Regular Interest Rate

FmHA has specific interest rates for each type of loan. These interest rates change quite often. They depend on what it costs the government to borrow money. Each type of loan will have a regular rate.

Limited Resource Interest Rate

If you have an operating loan (OL) or a farm ownership (FO) loan, it may be possible for you to get a "limited resource loan interest rate." For OL loans, the limited resource loan rate is 3 percent below the regular rate. For farm ownership loans, the limited resource loan rate is between 5 percent and an amount that depends on what it costs the government to borrow money.

Interest Rate for Loan Servicing

When loans are consolidated, rescheduled, or reamortized, the interest rate on the new loan will be either the interest rate on the original loan or the current regular rate of interest for the type of loan, whichever is less. The borrower may be able to get the limited resource interest rate on OL or FO loans.

For information about current interest rates, contact the county FmHA office.

5) Loan Deferral

Payments of principal and interest can be temporarily delayed for up to 5 years. You must show that you cannot pay essential living expenses or maintain your property and pay your debts. You must also show you will be able to pay at the end of the delay period.

The interest rate on a deferred loan will be either the current rate of interest for loans of the same type or the original rate on the loan, whichever one is lower.

The interest that builds up during the delay period will not be added to the principal of the loan. You must pay this interest in equal yearly payments for the rest of the loan term.

NOTE: You can only get a loan deferral if the FmHA decides options 1-4 will not work for you.

NOTE: FmHA Softwood Timber Programs. Marginal land including highly erodible land and pasture can be planted in softwood timber. If you qualify, a debt of up to $1000 an acre can be deferred up to 45 years. Interest will be charged during the deferral period. The debt must be paid when the timber is sold.

NOTE: Conservation Easements. Use of highly erodible land, wetlands, or wildlife habitat can be signed over to the Secretary of Agriculture. The Secretary will reduce the debt by the value of the land or by the difference between the value of the land and the amount you owe, whichever is larger. The amount of land left after the set aside must be enough to continue the farming operation.

6) Debt Write-Down

This means the debt you owe is reduced. FmHA can reduce both the principal and interest of the debt. The debt can be reduced to the recovery value of the property mortgaged to FmHA to get the loan. This property is called collateral. The recovery value is the value of the collateral minus all of the attorney, management, resale, and other expenses FmHA would have if they foreclosed on and sold the collateral. These expenses include payments on other loans against the collateral that FmHA would have to pay if it foreclosed and sold the collateral. The value of the collateral must be decided by a qualified appraiser.

In order to get debt write-down, you must show that you will have enough money to pay all of your family living and farming operating expenses and scheduled debt payments. This includes making payment on the FmHA loan once part of the loan is written down. This means you must show that you have a feasible plan of operation. FmHA will never write down more of the debt than is necessary for you to show a feasible plan.

The write-down is used only when the loan servicing programs listed in programs 1-5 above alone will not be enough for you to show a feasible plan. If you get loan servicing, some of the principal and interest on your loan(s) will be written down in addition to changing the payback period, and possibly the interest rate, using programs 1-5 above.

II. Who Can Qualify for Primary Loan Service Programs

To qualify you must prove that:

1) You cannot repay your FmHA debt due to circumstances beyond your control. This means that you have had less money than expected due to such things as:
   a) A natural disaster, weather, or insect problems,
   b) Family illness or injury,
   c) Loss or reduction of off-farm income,
   d) Disease in your livestock,
   e) Low commodity prices and high operating expenses in your local area, or
   f) Other circumstances beyond your control; *and*
2) You have honestly acted in "good faith" and tried to keep your agreements with FmHA in that you have kept agreements for the use of proceeds and release of property used to secure the loan, and your file shows no fraud, waste, or conversion.

Who Will Decide if You Qualify?

The FmHA County Supervisor will decide if you qualify. The County Supervisor will decide whether you can pay as much or more on the loan as FmHA would get if they foreclosed and sold the collateral for the loan. To do this, the County Supervisor must decide whether you can pay at least as much as the "recovery value" explained above.

How Soon Will You Know?

Within 60 days from the day you apply you will get a copy of the County Supervisor's analysis and decision.

Can You Get Your Debts Written Down?

Only if FmHA will get as much or more by writing down part of your debt than it will get if it forecloses and sells the collateral for the loan.

Conditions of the New Agreement if You Qualify

You must sign a shared application apprecation. The agreement asks you to:

- Repay a part of the sum written down.
- The amount depends on how much your real estate collateral increases in value.
- The shared appreciation agreement will not last longer than 10 years.

During this 10 years, FmHA will ask you to repay part of the debt it wrote down if you do one of the following things:

1) Sell or convey the real estate
2) Stop farming
3) Pay off the entire debt

If you do not do one of these things during the 10 years, FmHA will ask you to repay part of the debt written down at the end of the 10 years.

FmHA can only ask you to repay if the value of your real estate collateral goes up.

In the first four years of the agreement, FmHA will ask you to pay 75 percent of the increase in value of the real estate. In the last 6 years, it will ask you to pay only 50 percent of the increase in value. However, FmHA can never ask you to pay more than the amount of the debt they wrote down.

Mediation of Other Loans

If you cannot show a feasible farm plan because you owe too much to other creditors and suppliers, FmHA will help you try to get your other creditors to adjust your debts. This will be done by FmHA asking for mediation if your state has a mediation program approved by the Department of Agriculture. If there is no state mediation program, FmHA will try to set up a meeting with your other creditors and suppliers.

Date to Begin Agreement

If you are found eligible, you will be informed of the date for an appointment so your debt can be adjusted. **You must notify FmHA that you accept its offer to restructure your debt within 45 days of when you receive the offer.**

III. Preservation Loan Service Programs

Purpose

These programs apply when the primary loan service programs cannot help you.

Programs Available

1) **Homestead Protection.** (Keeping your farm home.) You may purchase or lease your farm home and outbuildings plus a limited amount of land. The limit on the land you can retain is up to 10 acres. The lease time will be for up to 5 years. The lease will include an option to buy back the property you lease.
2) **Farmland Leaseback/Buyback.** You can either lease the entire farm back or buy it back from FmHA.

IV. Who Can Qualify for Homestead Protection?

1) Your gross annual income from your farm and/or ranch must be similar to other comparable operations in your area. This must be true for at least 2 years of the last 6 years.
2) Sixty percent (60%) of your gross annual income in at least 2 of the last 6 years must have come from the farming operation.
3) You must have lived in your homestead property for the 6 years immediately before your application. This rule can be waived if you had to leave for less than 12 months *and* you had no control over the circumstances.
4) If FmHA has already taken your property, you must apply within 90 days of the date FmHA took your property. (FmHA must notify you within 30 days of taking your property.)

How to Lease Your Dwelling

1) You may lease your home and up to 10 acres if you pay FmHA reasonable rent. The rent prices FmHA charges you must be similar to comparable property in your area.
2) You must maintain the property in good condition.
3) You may lease for up to 5 years.
4) You cannot sublease your property.
5) If you do not keep up your rental payments to FmHA, FmHA will evict you and force you to leave. Before FmHA forces you to leave, they must let you appeal. FmHA must also follow the laws of your state.

NOTE: You can buy back your property at current market value at any time during the lease. Current market value will be decided by an independent appraiser. The appraisal will be made within 6 months of your application for homestead protection.

V. How to Lease Back or Buy Back Farmland Property

Under certain conditions you may lease or buy back your entire farm. You can apply for the leaseback or buyback before FmHA gets title to your land, and you can apply after FmHA takes title.

How Long Do I Have to Decide?

If FmHA takes your farmland, you will have 180 days after FmHA takes it to apply to purchase or lease your property. (Some states give you a longer time period.)

Who Can Apply to Buy or Lease Back?

1) Buyback or leaseback rights apply to you, your spouse, or your children if they also have been actively involved in farming.

2) Members of family-held corporations if the corporation had the loan from FmHA.

3) Members of partnerships or joint operations who were responsible to pay the FmHA loan.

NOTE: You must notify your family of their right to lease or buy back. Your spouse and your children's rights exist only if FmHA takes the property into inventory.

Order of Rights to Buy or Lease Back.

1) The former owner has first right. His/her right to be considered will last for 180 days from the time FmHA gets title to the land.

2) The owner's spouse or children or stockholders in family farm corporations. Their right to be considered will last for 10 days after the owner's ends.

3) The operator, if he/she is not owner of the property and was operating the property when FmHA took it into inventory.

4) Operators of family-size farms.

NOTE: If the land is on an Indian reservation and was owned by a tribe member, FmHA will make special offers to tribal members. FmHA will do this after the time period for owner/family/partners buyback has passed.

Who Can Qualify for Buybacks Financed by FmHA or Leasebacks?

1) You must have enough financial and management skills to show you will be successful in the farming operation.

NOTE: If you get financing from someone other than FmHA, you do not need management skills.

2) You must give FmHA a farm plan that shows you have a reasonable chance of being successful.

3) The rent price must be based on reasonable rent for the same type of property in your area.

4) The purchase price for the farmland must not be more than a price that reflects the amount of money you can make from the land by farming it. FmHA calls this the capitalization value.

VI. How to Apply for Primary and Preservation Loan Servicing

Forms to apply to primary and preservation programs

These forms should be included with this notice. If they are not, you can get them from your county office or as directed below.

	Form number	Title
1)	FmHA 410-1	Application for FmHA Services (The financial statement on this form must include information no more than 90 days old. The financial statement must be for all individuals, corporations, or partnerships personally liable for the FmHA debt.)
2)	FmHA 410-8	Application Reference Letters
3)	FmHA 410-9	Statement Regarding Privacy Act
4)	FmHA 431-2	Farm and Home Plan
5)	FmHA 440-32	Request for Statement of Debts and Collateral
6)	FmHA 1910-5	Request for Verification of Employment
7)	FmHA 1924-1	Development Plan (if you are planning to make major changes in your farming operation)
8)	SCS-CPA-26	Highly Erodible Land and Wetland Conservation Certification (This form is included but must be completed in a Soil Conservation Service office.)
9)	Ad 1026	Highly Erodible Land and Wetland Conservation Certification (This form is included but must be completed in a Soil Conservation Service office.)

NOTE: For Homestead Protection only, obtain the Agricultural Stabilization and Conservation Service or Soil Conservation Service photo of the farm. Show the homestead site you wish to apply for.

NOTE: For Conservation Easement only, get the Agricultural Stabilization and Conservation Service or Soil Conservation Service photo of your farm. Show approximate number of acres you wish to use for a conservation easement.

Time to Apply

You must complete all of these forms and get them to the FmHA office within 45 days from the date you received this notice. FmHA will not consider you for the loan service programs until it gets all of these completed forms.

VII. What Happens When You Are Not Eligible for Primary Loan Service Programs?

If the County Supervisor decides you are not eligible, you may request a meeting with the County Supervisor so he/she can explain the decision. If you think the County Supervisor's decision is wrong, you can tell him/her why. If you can make the necessary changes to your Farm and Home Plan to show a feasible plan, you should show these changes to the County Supervisor.

You Have the Right to Appeal.

1) **Appeal Hearing.** If you do not convince the County Supervisor that you should get primary loan servicing, you have a right to appeal the decision. The County Supervisor must send you a letter after the meeting that explains his/her decision. The letter must also say you have 30 days to ask for an appeal hearing. You can present witnesses and documents and ask FmHA questions at the hearing. The appeal hearing is recorded, and you can get a copy of the transcript of the hearing if you pay for the copying costs.

2) **Review.** If you do not win at the appeal hearing, FmHA must tell you why and let you ask for a review of that decision. The transcript and the documents used at the hearing will be reviewed when you ask for a review of the appeal hearing decision.

3) **Independent Appraisal.** You may ask for an independent appraisal of your property in which FmHA has a security interest. This independent appraisal may be important if you think FmHA has put too high or too low a value on your property when it considered you for primary loan servicing. You will have to pay for this appraisal. FmHA will give you three or more names of appraisers. You must choose one of them to do the independent appraisal.

You May Pay Off Your Loan at the "Recovery Value."

1) **Recovery Value.** If the analysis of your debt shows that you cannot "cash flow" even if your debt to FmHA is reduced to the net recovery value of the collateral, the County Supervisor will send you a letter saying you can pay off the loan by paying the "recovery value" of the land and property used to secure the loan. The letter will tell you the "recovery value."

   The "recovery value" is figured by subtracting from the fair market value of the collateral property all expenses FmHA would have to pay if it foreclosed and sold your property. These expenses include paying off other creditors who have an earlier security interest in the collateral, attorneys fees, administrative and management expenses, and taxes.

2) **Time Limit.** If you want to pay off the loan at "recovery value," you must pay FmHA within 45 days of the date your receive the letter. If you appeal, the County Supervisor's decision not to give you primary loan servicing, this 45 days will not start until all of the appeals end.

3) **Cash.** If you pay off the loan, you must pay in cash.

Consideration for Preservation Loan Service Programs.

You will be considered for preservation loan service programs if:

1) You do not appeal or do not win your appeal, and

2) You do not pay off the loan at recovery value.

FmHA will consider you for preservation loan service programs after the 45-day time period you have to pay off the loan at recovery value.

Consideration for homestead protection and/or farmland leaseback/buyback. You will be considered for preservation loan service programs if you:

1) Meet the conditions described above, and

2) Agree to give FmHA title to your land at the time FmHA signs the written dwelling retention and/or farmland leaseback/buyback agreement with you. The written agreement will include the amount you must pay for rent, the number of years you can rent, and an option to buy.

FmHA may consider you for homestead protection and farmland leaseback/buyback on your real estate and, at the same time, consider you for buyback of your equipment and any other non-real estate collateral at market value.

VIII. What Happens When You Are Turned Down for Preservation Loan Service Programs?

You Can Appeal.

If FmHA decides that you cannot get homestead protection and/or farmland leaseback/buyback, you can ask for:

1) A meeting with FmHA to discuss the decision, and

2) An appeal hearing.

The Right to a Meeting

The County Supervisor will send you a letter telling you why FmHA decided not to give you homestead protection or farmland leaseback/buyback. That letter will give you 15 days to ask for a meeting with FmHA.

The Right to an Appeal Hearing

If you do not convince FmHA at the meeting to give them to you, FmHA will send you another letter giving you 30 days to request an appeal hearing.

At the appeal hearing, you can contest FmHA's rental price and its decision not to give you homestead protection and/or farmland leaseback/buyback.

The Right to a Review

If you do not win the appeal hearing, FmHA must let you ask for a further review. The recorded transcript of the hearing will be reviewed at this stage. You can get a copy of the transcript by paying the copying costs.

IX. What Happens if You Do Not Win the Appeal for Preservation Loan Service Programs?

FmHA will accelerate your loan account and call in the whole debt. They will stop allowing you to use any of your crop, livestock, and milk checks on which they have a claim to pay for living and operating expenses. They will also repossess the collateral or start legal foreclosure or liquidation proceedings to take and sell the collateral, including your equipment, livestock, crops, and land. After acceleration FmHA may also take by administrative offset, money which other Federal Government agencies owe you.

FmHA will take this action unless you do one of the following things:

1) Sell all the collateral for the loan at market value
2) Convey (legally transfer) the collateral to FmHA
3) Apply to transfer the collateral to someone else and have that person assume all or part of the FmHA debt. (This is called transfer and assumption.)

If any of these options result in payment of less than you owe, you can apply for a debt settlement so that you will no longer be personally liable for your FmHA debt. You may re-apply for homestead protection and farmland leaseback/buyback if FmHA takes your land or home. You may reapply for these programs, even if you applied before and did not get one of these programs and were not successful on appeal.

FmHA Instruction 1951-S
Exhibit A to Subpart S
Attachment 2

Acknowledgement of Notice of Program Availability

I/We have been given a notice explaining the primary loan service programs and the preservation loan service programs.

The date on the notice was ______________________ .

This notice explained that FmHA programs are available to help me keep my property.

I/We ask FmHA to consider me/us for all of these programs.

I understand that I will be notified of my rights to appeal after FmHA decides on my request.

Signature	Date

Position 3

USDA – FARMERS HOME ADMINISTRATION

FORM APPROVED
OMB NO. 0575-0056

Form FmHA 410-1
(Rev. 9-88)

APPLICATION FOR FmHA SERVICES

GENERAL INFORMATION: The "Application for FmHA Services" is to provide information needed to analyze the loan request. Tear at perforations for ease in use, or if additional financial statements are required for members of entities.

FmHA USE ONLY
☐ **INSURED**
☐ **GUARANTEED**

1a. **NAME:** *(Show official name without abbreviations unless the abbreviation is a part of the official name. For individual partnership or joint operation, show name(s) followed by d/b/a and trade name used, if any, and attach a copy of any partnership agreement). A husband and wife who want to apply for a loan together will be considered a joint operation. Either a husband or wife can apply as an individual.*

APPLICANT:

Social Security No. or Tax ID No.

1b. Have you conducted business under another name or Farm name during the last five (5) years? If so, please indicate names.

Street
City
County
State
Zip Code
Telephone Number

2. Ages of persons in household .... Applicant Spouse Others

3. Marital Status .... ☐ Married ☐ Separated ☐ Unmarried *(including single, divorced and widowed)*

4. **VETERAN** – For individual indicate if veteran ...... ☐ Yes ☐ No If "yes" indicate service from ______________ to ______________ Branch

5. **CITIZENSHIP** – Are you a United States citizen? .... ☐ Yes ☐ No
For entity applicants, is each member of the entity a U.S. citizen? .... ☐ Yes ☐ No
If "no", please give the names of each owner who is not a citizen and the percentage of ownership of each owner.

6. **RECEIVERSHIP - BANKRUPTCY** – Has the applicant or any member of the proposed entity ever been in receivership, been discharged in bankruptcy, or filed a petition for reorganization in bankruptcy? .... ☐ Yes ☐ No
If "yes" give names, dates and details. Use item 20 if necessary.

a. Have you or any member of an entity applicant obtained a loan or guarantee from Farmers Home Administration? .... ☐ Yes ☐ No
b. "If "Yes", was the loan paid in full? .... ☐ Yes ☐ No
c. Was the loan debt settled or were you ever released from personal liability as part of a debt settlement action? .... ☐ Yes ☐ No ☐ N/A
d. If a guaranteed loan, did the government pay the lender a loss claim? .... ☐ Yes ☐ No ☐ Do not know
e. Are you delinquent on any Federal debt? .... ☐ Yes ☐ No *(If "Yes" explain in Item 20)*
(Examples of debts include delinquent taxes, ASCS loans, education loans, etc.)

7. **MANAGEMENT** – *(Corporations, Cooperatives, Partnerships and Joint Operators Only)* Enter names, addresses and Social Security numbers of (1) all owners, partners, key officers, directors, or stockholders and their annual compensation, including salaries, fees, withdrawals, etc., (2) hired manager, and (3) all other stockholders having an interest in the applicant. Personal guarantees from all stockholders or owners having an interest in a corporation, all members of a cooperative, all partners of partnerships and all members of a joint operation will be required. Final determinations will be made by the FmHA. Attach, in the case of personal guarantee, current financial statements not over 60 days old at time of filing, and for any corporate guarantee, current financial statements not over 60 days old at time of filing and certified by an officer of the corporation. Additional updated financial statements may be required depending on processing time.

Name (a)	Position or Title (b)	Annual Compensation $ (c)	% Ownership (d)	Outside Net Worth $ (e)	Other Income $ (f)	Insurance Carried For Benefit of Applicant (g)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to, Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

23-112 592

8. THE FARM OR RESIDENCE IS ______ MILES (DIRECTION) ______ FROM (TOWN) ______ ON ROAD ______

IT ADJOINS THE PROPERTY OF ______

9. ARE YOU FARMING OR RANCHING NOW? ______ ☐ YES ☐ NO

9a. IF NOT, WHEN DID YOU LAST OPERATE A FARM? ______, 19__

9b. NUMBER OF YEARS EXPERIENCE OPERATING A FARM ______

10. DO YOU OWN OR RENT FARM YOU PLAN TO OPERATE ______ ☐ OWN & RENT ☐ RENT ☐ OWN

	(LAST YR.)	(NEXT YR.)		(LAST YR.)	(NEXT YR.)
TOTAL ACRES OWNED			TOTAL ACRES RENTED		
CROP ACRES OWNED			CROP ACRES RENTED		

DO YOU LIVE ON FARM YOU PLAN TO OPERATE? ______ ☐ YES ☐ NO

IF "YES", HOW LONG HAVE YOU LIVED ON THIS FARM? ______ YRS

11. IF YOU RENT OR PLAN TO RENT COMPLETE THE FOLLOWING *(Use Item 20 if necessary)*

Landlord Name	Address	Crop Acres Rented	Terms and Length of Lease (e.g. cash/share and amount)	Written Lease Yes/No

12. NAME AND ADDRESS OF BANK WITH WHICH YOU LAST HAD A ☐ CHECKING OR SAVINGS ACCOUNT ☐ LOAN ACCOUNT

13. NAME AND ADDRESS OF EMPLOYER(S) ______ NUMBER OF YEARS WITH EMPLOYER (APPLICANT(S)) ______ INCOME LAST YEAR *(if any)* (APPLICANT(S)) ______

14. TOTAL CASH INCOME LAST YEAR

Livestock and livestock products sold ______ $ ______

Crops sold ______

Other farm income ______

Nonfarm income (SALARY, PENSIONS, DIVIDENDS, RENTS, ETC.) ______

TOTAL $ ______

15. TOTAL CASH EXPENSES LAST YEAR

Family Living ______ $ ______

Farm operating *(excluding interest)* ______

Interest paid ______

Nonfarm operating ______

Personal real estate and income taxes paid ______ $ ______ ______

Other ______

(CAPITAL GOODS PURCHASED AND PRINCIPAL PAYMENTS MADE) ______

TOTAL EXPENSE ______

16. SOURCE AND USE OF FUNDS Loan funds will be used for the following purposes in the following amounts

AMOUNT OF LOAN REQUESTED $ ______

OPERATING PURPOSES

OPERATING EXPENSES

(a) Family Living Expenses ______

(b) Crop Production Expense ______

(c) Livestock Production Expense ______

(d) Capital Purposes *(Equipment, Livestock)* ______

(e) Refinance Debts ______

(f) Real Estate Improvements *(up to $15,000)* ______

(g) Loan Fees and Expenses ______

(h) Other Authorized Operating Purposes *(describe in detail)* ______

REAL ESTATE PURPOSES

(a) Purchase Real Estate ______

(b) Real Estate Development ______

(c) Construction of Buildings ______

(d) Refinance Debts ______

(e) Loan Fees and Expenses ______

(f) Other *(describe in detail)* ______

17. FINANCIAL STATEMENT AS OF DATE OF APPLICATION

(Show property owned and debts owed by applicant)

LIST ALL PROPERTY OWNED				
CURRENT FARM ASSETS				**$ VALUE**
Cash: Savings: ($) Checking: ($)				
Other Invest: (Time Cert $) (Other $)				
Accounts and Notes Receivable				
Crops and Feed	Units	Value Per Unit		▨
Livestock to be sold	Units	Units Weight	Value Per Unit	▨
Growing crops	Acres	Cost/Acre		▨
Supplies & Prepaid Expenses				
Leases				
Other				
TOTAL CURRENT FARM ASSETS ▶				
INTERMEDIATE FARM ASSETS				▨
Accounts & Notes Receivable beyond 12 months				
Breeding Livestock	Units	Value Per Unit		▨
Machinery, Equipment, Vehicles				
Cash Value, Life Ins. (Face Amt. $)				
CCC Grain Reserve: (Qty.) (Value/Unit)				
Coop Stock				
Other				
TOTAL INTERMEDIATE FARM ASSETS ▶				
LONG TERM FARM ASSETS (Farm Real Estate)				▨
Total Acres	Date Purchased	Cost		▨
Coop Stock				
Equity in Partnerships/Corporations/Joint Operations/Cooperatives				
Other				
TOTAL LONG TERM FARM ASSETS ▶				
TOTAL FARM ASSETS ▶				

LIST ALL DEBTS OWED				
CURRENT FARM LIABILITIES				**$ AMOUNT**
Accounts and Notes Payable (Creditor & Due Date)	Past Due			▨
CCC Loan: (Security) (Due Date)				
Current Portion of Principal Due on:				▨
Intermediate Liabilities				
Long Term Liabilities				
Accrued Interest on:				▨
Accounts and Notes Payable				
Intermediate Liabilities				
Long Term Liabilities				
Accrued Taxes				
Income Tax & Social Security				
Other (judgments, liens, etc.)				
Accrued Rent/Lease Payments				
TOTAL CURRENT FARM LIABILITIES ▶				
INTERMEDIATE FARM LIABILITIES (portion due beyond 12 months)				▨
Creditor	Due Date	Int. Rate	Amount Delinquent	▨
CCC Grain Reserve				
Facilities Pmt. $				
Loan Secured by Life Insurance				
Other				
TOTAL INTERMEDIATE FARM LIABILITIES ▶				
LONG TERM FARM LIABILITIES (portions due beyond 12 months)				▨
Creditor	Due Date	Int. Rate	Amount Delinquent	▨
Other				
TOTAL LONG TERM FARM LIABILITIES ▶				
TOTAL FARM LIABILITIES ▶				

FINANCIAL STATEMENT (continued)

NONFARM ASSETS	$ VALUE	NONFARM LIABILITIES				$ AMOUNT
Real Estate		Nonfarm accounts payable				▨
Car, Recreational Vehicles, etc.						
Household goods						
Cash value of Life Insurance						
Stocks, bonds, and other						
Nonfarm Business		Nonfarm notes payable:				▨
		Name of Creditor	Due Date	Interest Rate	Annual Instal.	Principal Balance
		TOTAL NONFARM LIABILITIES ▶				
		TOTAL LIABILITIES ▶				
TOTAL NONFARM ASSETS ▶		NET WORTH ▶				
TOTAL ASSETS ▶		**TOTAL LIABILITIES AND NET WORTH** ▶				

18 Have you or any member, stockholder, partner or joint operator entity applicant been convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance since December 23, 1985? ☐ Yes ☐ No

If yes, please provide date of conviction and details on a separate sheet.

19 I am unable to provide the needed items on my own account, and I am unable to obtain the necessary credit for such items from other sources upon terms and conditions which I can reasonably fulfill, including a Loan Guarantee (for an insured applicant), without a Loan Guarantee (for a guaranteed applicant). I certify that the statements made by me in this application are true, complete and correct to the best of my knowledge and belief and are made in good faith to obtain a loan. I understand that the 60 day prompt approval period will not begin until a complete application has been filed.

WARNING: Section 1001 of Title 18, United States Code Provides: "Whoever, in any matter within the jurisdiction of any Department or Agency of the United States knowingly and willfully falsifies, conceals or covers up a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both."

______________________ *(Date)*

______________________ *(Signature of Applicant)*

20 ADDITIONAL SPACE FOR ANSWERS *(Write the number to which each answer applies. If you need more space, use sheets of paper the same size of this page. On each sheet write applicant's name.)*

21. VOLUNTARY INFORMATION FOR MONITORING PURPOSES

The following information is requested by the Federal Government in order to monitor FmHA's compliance with federal laws prohibiting discrimination against loan applicants on the basis of race, color, national origin, religion, sex, marital status, handicapped condition or age (provided that the applicant has the capacity to enter into a binding contract). You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. However, if you choose not to furnish it, FmHA is required to note the race/national origin and sex of individual applicants on the basis of visual observation or surname.

APPLICANT	SEX
RACE/NATIONAL ORIGIN *(Not of Hispanic origin)* ☐ WHITE ☐ BLACK ☐ AMERICAN INDIAN OR ALASKAN NATIVE ☐ HISPANIC ☐ ASIAN OR PACIFIC ISLANDER ☐ OTHER *(Specify)*	☐ MALE ☐ FEMALE

Form FmHA 410-9 *Position 3*
(Rev. 3/87)

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

STATEMENT REQUIRED BY THE PRIVACY ACT

The Farmers Home Administration (FmHA) is authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et. seq.); and Title V of the Housing Act of 1949, as amended (42 U.S.C. 1471 et. seq.), or other Acts administered by FmHA to solicit the information requested on FmHA applications forms.

Disclosure of information requested is voluntary. However, failure to disclose certain items of information requested including your Social Security Account or Federal Identification Number may result in a delay in the processing of an application or its rejection.

The principal purposes for collecting the requested information are to determine eligibility for FmHA credit or other financial assistance, the need for interest credit or other servicing actions, for the servicing of your loan, and for statistical analysis. Information provided may be used outside of the Department of Agriculture for the following purposes:

1. Release to interested parties who submit requests under the Freedom of Information Act.
2. To provide the basis for borrower success stories in Department of Agriculture news releases.
3. Referral to the appropriate law enforcement agency as set forth in 40 FR 38924 (1975).
4. Referral to employers, businesses, landlords, creditors or others to determine repayment ability and eligibility for FmHA programs.
5. Referral to a contractor providing services to FmHA in connection with your loan.
6. Referral to a credit reporting agency.
7. Referral to a person or organization when FmHA decides such referral is appropriate to assist in the collection or servicing of the loans.
8. Referral to a Federal Records Center for storage.

Every effort will be made to protect the privacy of applicants and borrowers.

FEDERAL EQUAL CREDIT OPPORTUNITY ACT STATEMENT

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency which administers compliance with this law concerning the Farmers Home Administration is the Federal Trade Commission, Pennsylvania Avenue at Sixth Street N.W., Washington, D.C. 20580.

This is to acknowledge my receipt of the above and also, in the case of applicants for business and industry, limited profit rural rental housing and emergency loans to other than individuals, that I have read the reverse of this form, and accept the conditions stated thereon.

APPLICANT *(Signature)*	CO-APPLICANT *(Signature)*	DATE

Farmers Home Administration is an Equal Opportunity Lender.
Complaints of discrimination should be sent to:
Secretary of Agriculture, Washington, D.C. 20250

FOIA Notification

WARNING

All information supplied to Farmers Home Administration (FmHA) by you or your agents in connection with your loan application *may* be released to interested third parties, including competitors, without your knowledge or consent under the provision of the Freedom of Information Act (5 U.S.C. 552).

Much information not clearly marked "Confidential" may routinely be released if a request is received for same. Further, if we receive a request for information which you have marked "Confidential" the Federal Government will have to release the information unless you can demonstrate to our satisfaction that release of the information would be likely to produce substantial competitive harm to your business or would constitute a clearly unwarranted invasion of personal privacy. Also, forms, consultant reports, etc., cannot be considered confidential in their entirety if confidential material contained therein can reasonably be segregated from other information.

Information submitted may be made available to the public during the time it is held in Government files regardless of the action taken by FmHA on your application.

Position 3

FORM APPROVED
OMB NO. 0575-0081

Form FmHA 431-2
(Rev. 7-88)

U.S. Department of Agriculture
Farmers Home Administration

FARM AND HOME PLAN

PERIOD COVERED BY PLAN: From 19 TO 19

NAME OF APPLICANT/BORROWER

CASE NUMBER

DATE OF PLAN

ACRES OWNED
TOTAL ( ) CROP ( )

A. BALANCE SHEET

CURRENT FARM ASSETS				**$ VALUE**
Cash: Savings: ($) Checking ($)				
Other Invest: (Time Cert $) (Other $)				
Accounts and Notes Receivable				
Crops and Feed	Units		Value Per Unit	
Livestock to be sold	Units	Unit Weight	Value Per Unit	
Growing crops	Acres		Cost/Acre	
Supplies & Prepaid Expenses				
Leases				
Other				
TOTAL CURRENT FARM ASSETS ▶				
INTERMEDIATE FARM ASSETS				
Accounts & Notes Receivable beyond 12 months				
Breeding Livestock	Units		Value Per Unit	
Machinery, Equipment, Vehicles				
Cash Value, Life Ins. (Face Amt. $)				
CCC Grain Reserve: (Qty.) (Value/Unit)				
Coop Stock				
Other				
TOTAL INTERMEDIATE FARM ASSETS ▶				
LONG TERM FARM ASSETS (Farm Real Estate)				
Total Acres	Date Purchased		Cost	
Coop Stock				
Equity in Partnerships/Corporations/Joint Operations/Cooperatives				
Other				
TOTAL LONG TERM FARM ASSETS ▶				
TOTAL FARM ASSETS ▶				

CURRENT FARM LIABILITIES				**$ AMOUNT**
Accounts and Notes Payable (Creditor & Due Date)			Past Due	
CCC Loan: (Security) (Due Date)				
Current Portion of Principal Due on:				
Intermediate Liabilities				
Long Term Liabilities				
Accrued Interest on:				
Accounts and Notes Payable				
Intermediate Liabilities				
Long Term Liabilities				
Accrued Taxes				
Income Tax & Social Security				
Other (judgments, liens, etc.)				
Accrued Rent/Lease Payments				
TOTAL CURRENT FARM LIABILITIES ▶				
INTERMEDIATE FARM LIABILITIES (portion due beyond 12 months)				
Creditor	Due Date	Int. Rate	Amount Delinquent	
CCC Grain Reserve				
Facilities Pmt. $				
Loan Secured by Life Insurance				
Other				
TOTAL INTERMEDIATE FARM LIABILITIES ▶				
LONG TERM FARM LIABILITIES (Portions due beyond 12 months)				
Creditor	Due Date	Int. Rate	Amount Delinquent	
Other				
TOTAL LONG TERM FARM LIABILITIES ▶				
TOTAL FARM LIABILITIES ▶				

Public reporting burden for this collection of information is estimated to average 2½ hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this

A. BALANCE SHEET (continued)

NONFARM ASSETS	$ VALUE	NONFARM LIABILITIES				$ AMOUNT
Real Estate		Nonfarm accounts payable				
Car, Recreational Vehicles, etc.						
Household goods						
Cash value of Life Insurance						
Stocks, bonds, and other						
Nonfarm Business		Nonfarm notes payable				
		Name of Creditor	Due Date	Interest Rate	Annual Instal	Principal Balance
		TOTAL NONFARM LIABILITIES ▶				
		TOTAL LIABILITIES ▶				
TOTAL NONFARM ASSETS ▶		NET WORTH ▶				
TOTAL ASSETS ▶		**TOTAL LIABILITIES AND NET WORTH ▶**				

The above information is furnished for the purpose of securing and maintaining credits and is certified to be complete and correct. The undersigned authorizes the FmHA to make all inquiries deemed necessary to verify the accuracy of the information contained above to determine my credit-worthiness and to answer questions about their credit experience with me. I agree to notify FmHA promptly to any material changes to the above. I recognize that making any false statement on this Farm and Home Plan or any other loan document may constitute a violation of criminal law.

Signature of Applicant/Borrower/Entity Member	Date

1. Total of Cash On Hand, Crops and Livestock for Immediate Sale, and Income To Be Received in Immediate Future	
2. Debts and Expenses We Will Pay From Above Cash and Income (Itemize)	
3. Cash Carry-Over for Next Year's Operations After Paying These Debts	

	Beginning of Year	End of Year	Increase or Decrease (FmHA use only)
4. Net Worth (Total Property Owned Minus Total All Debts)			
5. Total Land Debt			
6. Total Debts Other Than Land			

B. RENTAL AND LEASE INFORMATION

Land-General Description	Landlord	Acres		Type of Lease	Annual Cash Rent	Expiration Date
		Total	Crop			
	TOTAL ▶					

Other Items-Description	Owner	No. of Units		Type of Lease	Annual Payment	Expiration Date

NOTE: All "actual" data to be completed by end of crop year

C. IMPROVEMENTS AND KEY PRACTICES — FARM, HOME AND FINANCIAL MANAGEMENT

Crops, Soil, Livestock, Financial Management, Maintenance, Repairs, Food Production and Conservation, Health, Home, Environmental, Community and Rural Development Activities, Etc.	When To Do It	Source Of Funds	Actual Accomplishments
Type of Analysis ( ) Month			

D. CROPS, PASTURE, ETC. — PRODUCTION AND SALES

PLANNED							ACTUAL						
CROPS, PASTURE, SET-ASIDE PROGRAM PAYMENTS, ETC.	ACRES	YIELD PER ACRE	OPERATOR'S SHARE				ACRES	YIELD PER ACRE	OPERATOR'S SHARE				CASH INCOME
			UNITS FOR			DOLLAR SALES			UNITS				
			FARM USE	SALE	6				FARM USE	HELD FOR SALE	SOLD	6	
1.													
2.													
3.													
4.													
5.													
6.													
7.													
8.													
9.													
10.													
11. FARMSTEAD, GARDEN AND ROADS													
12. TOTAL (ENTER TABLE J, LINE 1)													

E. LIVESTOCK AND PRODUCTS — PRODUCTION SALES

PLANNED							ACTUAL						
LIVESTOCK AND PRODUCTS AND WOOL-MOHAIR PROGRAM PAYMENTS	NO.	PROD PER ANIMAL	OPERATOR'S SHARE				NO.	PROD PER ANIMAL	OPERATOR'S SHARE				CASH INCOME
			UNITS FOR			DOLLAR SALES			UNITS				
			FARM USE	SALE	6				FARM USE	HELD FOR SALE	SOLD	6	
1.													
2.													
3.													
4.													
5.													
6.													
7.													
8.													
9.													
10. MILK (LBS.)													
11. EGGS (DOZ.)													
12. TOTAL (ENTER TABLE J, LINE 2)													

F. CASH FAMILY LIVING EXPENSES	OTHER CREDIT NEEDED	FmHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
HOUSEHOLD OPNG				
FOOD INCL. LUNCHES				
CLOTH., PERS. CARE				
HEALTH				
HOUSE REPAIR AND SANITATION				
SCHOOL				
CHURCH, RECREATION				
PERS. INSURANCE				
TRANSPORTATION				
FURNITURE & OTHER				
TOTAL ▶				

G. CASH FARM OPERATING EXPENSES	OTHER CREDIT NEEDED	FmHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
HIRED LABOR				
MACHINERY REPAIR				
FARM BUILDING & FENCE REPAIR				
INTEREST				
RENT				
FEED				
SEED				
FERTILIZER				
PESTICIDES & SPRAY MATERIALS				
OTHER SUPPLIES				
LIVESTOCK EXPENSE				
MACHINERY HIRE				
FUEL AND OIL				
PERSONAL PROP. TAX				
REAL ESTATE TAXES				
WATER CHARGES				
PROPERTY INSURANCE				
AUTO & TRUCK EXPENSE				
UTILITIES				
CURRENT OPNG. BILLS (TABLE A)				
TOTAL ▶				

H. CAPITAL EXPENDITURES	OTHER CREDIT NEEDED	FmHA CREDIT NEEDED	PLANNED EXPENSES	ACTUAL EXPENSES
DEBTS REFINANCED (TABLE A)				
TOTAL ▶				

I. CREDIT FOR:	OTHER	FmHA	PLANNED	ACTUAL
FAMILY LIVING				
FARM OPERATING				
CAPITAL EXPENDITURES				
TOTAL ▶				

J. SUMMARY OF YEAR'S BUSINESS	PLANNED	ACTUAL
1. CROP INCOME *(Table D)*		
2. LIVESTOCK INCOME *(Table E)*		
3. CONSERVATION PAYMENTS AND OTHER FARM INCOME		
4. TOTAL CASH FARM INCOME *(1, 2 and 3)*		
5. CASH FARM OPERATING EXPENSES *(Table G)*		
6. NET CASH FARM INCOME *(4 Minus 5)*		
7. NON-FARM INCOME		
8. TOTAL NET CASH FARM & NON-FARM INCOME *(6 Plus 7)*		
9. CASH FAMILY LIVING EXPENSES *(Table F)*		
10. NET CASH INCOME *(8 Minus 9)*		
11. CASH CARRY-OVER *(Page 2, Line 3)*		
12. LOANS AND OTHER CREDIT *(Table I)*		
13. INTEREST *(Table G)*		
14. TOTAL AVAILABLE *(10, 11, 12 and 13)*		
15. CAPITAL EXPENDITURES *(Table H)*		
16. BALANCE AVAILABLE *(14 Minus 15)*		
17. GROSS CASH INCOME *(4 Plus 7)*		

K. DEBT REPAYMENT

TO WHOM OWED	AMOUNT DUE THIS YEAR (PRIN. AND INT.)	PLAN			ACTUAL AMOUNT PAID
		PRIN. AND INT. TO BE PAID	DATE	SOURCE OF FUNDS	
INCOME AND SOCIAL SECURITY TAXES					
TOTAL ▶					

I agree to follow this plan and to discuss with the County Supervisory any important changes that may become necessary. This instrument is a prospective plan only and does not release the security interest of the government in any security referred to in this plan.

"I RECOGNIZE THAT MAKING ANY FALSE STATEMENT ON THIS FARM AND HOME PLAN OR ANY OTHER LOAN DOCUMENT MAY CONSTITUTE A VIOLATION OF FEDERAL CRIMINAL LAW."

Signature of Applicant/Borrower	Date
Signature of County Supervisor	Date

USDA-FmHA
Form FmHA 440-32
(Rev. 3-89)

FORM APPROVED
OMB No. 0575-0011

REQUEST FOR STATEMENT OF DEBTS AND COLLATERAL

TO: *(Name and Address of Creditor)*

RETURN TO: FARMERS HOME ADMINISTRATION

I, ______________________ hereby request the following information as to the status of transaction(s) between us:

1. List debt(s) owed by me to you:

Principal Balance	*Accrued Interest*	*Date*	*Delinquent*	*Installment*	*Interest Rate*	*Daily Interest Accrual*	*Final Date Due*
$	$		$	$	%	$	
$	$		$	$	%	$	
$	$		$	$	%	$	
$	$		$	$	%	$	

Is interest charged on unpaid principal only? .... ☐ Yes ☐ No If "No," explain ______________

ALL INFORMATION PROVIDED WILL BE RELEASED TO APPLICANT AT APPLICANT'S REQUEST

2. Indicate the number of years you have known applicant. .... ______
   Indicate the number of years you have done business with applicant .... ______
3. Describe any collateral for such debt(s):

4. If you have lien instruments, do they have a future advance clause? .... ☐ Yes ☐ No
5. If you have lien instruments, do they have an after-acquired property clause? .... ☐ Yes ☐ No
6. Are you willing to extend, renew or reduce such debt(s)? .... ☐ Yes ☐ No
   If "Yes," amount of principal reduction expected each year .... $ ______
7. Would you extend additional credit? .... ☐ Yes ☐ No
8. If you are a financial institution, would you consider extending additional credit with an FmHA guarantee? .. ☐ Yes ☐ No
9. Please rate applicant's repayment record. ☐ *Prompt* ☐ *Usually prompt* ☐ *Not prompt*

CREDITOR'S REPLY

This requested information is submitted as of the date shown below.

____
(Creditor's Signature)

Date: ______________________

Telephone: ______________________
(Area Code) *(Number)*

Sincerely yours,

____
(Debtor's Signature)

Date: ______________________

This certifies that the U.S. Department of Agriculture, acting through FmHA, has complied with the applicable provisions of Title XI, the "Right to Financial Privacy Act of 1978," Public Law 95-630 in seeking financial information regarding the above named applicant.

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0011), Washington, D.C. 20503

USDA-FmHA
Form FmHA 440-32
(Rev. 3-89)

FORM APPROVED
OMB NO. 0575-0011

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$	$		$	$	%	$	
$	$		$	$	%	$	
$	$		$	$	%	$	

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USDA-FmHA
Form FmHA 440-32
(Rev. 3-89)

FORM APPROVED
OMB NO. 0575-0011

REQUEST FOR STATEMENT OF DEBTS AND COLLATERAL

TO: *(Name and Address of Creditor)*

RETURN TO: FARMERS HOME
ADMINISTRATION

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$	$		$	$	%	$	
$	$		$	$	%	$	
$	$		$	$	%	$	
$	$		$	$	%	$	

Is interest charged on unpaid principal only? .... ☐ Yes ☐ No If "No," explain ______

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Date: ______________________

Telephone: ______________________
(Area Code) *(Number)*

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USDA-FmHA
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USDA-FmHA
Form FmHA 440-32
(Rev. 3-89)

FORM APPROVED
OMB NO. 0575-0011

REQUEST FOR STATEMENT OF DEBTS AND COLLATERAL

TO: *(Name and Address of Creditor)*

RETURN TO: FARMERS HOME ADMINISTRATION

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$	$		$	$	%	$	
$	$		$	$	%	$	
$	$		$	$	%	$	
$	$		$	$	%	$	

Is interest charged on unpaid principal only? ☐ Yes ☐ No If "No," explain ______

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Position 3

Form FmHA 1910-5
(Rev. 10-86)

FORM APPROVED
OMB NO. 0575-0009

PRIVACY ACT NOTICE: This information is to be used by the agency collecting it in determining whether you qualify as a prospective mortgagor or borrower under its program. It will not be disclosed outside the agency without your consent except to your employer(s) for verification of employment and as required and permitted by law. The taxpayer's identification number/social security number must be provided in order to obtain the requested assistance as required by the Debt Collection Act of 1982. You do not have to give us the other information, but if you do not your application for approval as a prospective mortgagor or borrower may be delayed or rejected. The information requested in this form is authorized by Title 38, U.S.C., Chapter 37 (if VA); by 12 U.S.C., Section 1701 et seq. (if HUD/FHA); by 42 U.S.C., Section 1452b (if HUD/CPD); Title 42, U.S.C., 1471 et seq., or 7 U.S.C., 1921 et seq. (if USDA, FmHA); and P.L. 97-365.

VETERANS ADMINISTRATION,
USDA, FARMERS HOME ADMINISTRATION, AND
U.S. DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT —

(Community Planning and Development, and
Housing — Federal Housing Commissioner)

REQUEST FOR VERIFICATION OF EMPLOYMENT

INSTRUCTIONS

LENDER OR LOCAL PROCESSING AGENCY (LPA): Complete Items 1 through 7. Have the applicant complete Item 8. Forward the completed form directly to the employer named in Item 1. EMPLOYER: Complete either Parts II and IV or Parts III and IV. Return form directly to the office identified in Item 2 of Part I.

PART I – REQUEST

1. TO: *(Name and Address of Employer)*

2. FROM: *(Name and Address of Lender or Local Processing Agency)*

3. I certify that this verification has been sent directly to the employer and has not passed through the hands of the applicant or any other interested party.

(Signature of Lender, Official of LPA, or FmHA Loan Packager)

4. TITLE OF LENDER, OFFICIAL OF LPA, OR FmHA LOAN PACKAGER

5. DATE

6. HUD/FHA/CPD, VA, OR FmHA NO.

7. NAME AND ADDRESS OF APPLICANT

I have applied for a mortgage loan or a rehabilitation loan and stated that I am/was employed by you. My signature in the block below authorizes verification of my employment information.

8. TAXPAYER'S IDENTIFICATION NO./SOCIAL SECURITY NO.

SIGNATURE OF APPLICANT

PART II – VERIFICATION OF PRESENT EMPLOYMENT

EMPLOYMENT DATA

9. APPLICANT'S DATE OF EMPLOYMENT

10. PRESENT POSITION

11. PROBABILITY OF CONTINUED EMPLOYMENT

13. IF OVERTIME OR BONUS IS APPLICABLE, IS ITS CONTINUANCE LIKELY?

OVERTIME ☐ Yes ☐ No
BONUS ☐ Yes ☐ No

PAY DATA

12A. BASE PAY *(Current)*

$ ______ ☐ Annual
$ ______ ☐ Hourly
$ ______ ☐ Monthly
$ ______ ☐ Weekly
$ ______ ☐ Other *(Specify)*

12B. EARNINGS

Type	Year to Date	Past Year
BASE PAY	$	$
OVERTIME	$	$
COMMISSIONS	$	$
BONUS	$	$

For Military Personnel Only

Type	Monthly Amount
BASE PAY	$
RATIONS	$
FLIGHT OR HAZARD	$
CLOTHING	$
QUARTERS	$
PRO PAY	$
OVERSEAS OR COMBAT	$

14. REMARKS *(If paid hourly, please indicate average hours worked each week during current and past year)*

PART III – VERIFICATION OF PREVIOUS EMPLOYMENT

15. DATES OF EMPLOYMENT

16. SALARY/WAGE AT TERMINATION PER ☐ YEAR ☐ MONTH ☐ WEEK

BASE PAY	OVERTIME	COMMISSIONS	BONUS
$	$	$	$

17. REASONS FOR LEAVING

18. POSITION HELD

PART IV – CERTIFICATION

Federal statutes provide severe penalties for any fraud, intentional misrepresentation, or criminal connivance or conspiracy purposed to influence the issuance of any guaranty or insurance by the VA Administrator, the USDA, FmHA Administrator, the HUD/FHA Commissioner, or the HUD/CPD Assistant Secretary.

19. SIGNATURE

20. TITLE OF EMPLOYER

21. DATE

This form is used to verify the employment and income of applicants for FmHA services. Since eligibility for FmHA assistance is based partially on income, information collected is necessary to determine applicants' eligibility for FmHA loans and grants.

Position 3

Form FmHA 1910-5
(Rev. 10-86)

FORM APPROVED
OMB NO. 0575-0009

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VETERANS ADMINISTRATION,
USDA, FARMERS HOME ADMINISTRATION, AND
U.S. DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT —

(Community Planning and Development, and
Housing — Federal Housing Commissioner)

REQUEST FOR VERIFICATION OF EMPLOYMENT

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(Signature of Lender, Official of LPA, or FmHA Loan Packager)

4. TITLE OF LENDER, OFFICIAL OF LPA, OR FmHA LOAN PACKAGER

5. DATE

6. HUD/FHA/CPD, VA, OR FmHA NO.

7. NAME AND ADDRESS OF APPLICANT

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PAY DATA

12A. BASE PAY *(Current)*

$ ______ ☐ Annual
$ ______ ☐ Monthly
$ ______ ☐ Other *(Specify)*
$ ______ ☐ Hourly
$ ______ ☐ Weekly

12B. EARNINGS

Type	Year to Date	Past Year
BASE PAY	$	$
OVERTIME	$	$
COMMISSIONS	$	$
BONUS	$	$

For Military Personnel Only

Type	Monthly Amount
BASE PAY	$
RATIONS	$
FLIGHT OR HAZARD	$
CLOTHING	$
QUARTERS	$
PRO PAY	$
OVERSEAS OR COMBAT	$

14. REMARKS *(If paid hourly, please indicate average hours worked each week during current and past year)*

PART III – VERIFICATION OF PREVIOUS EMPLOYMENT

15. DATES OF EMPLOYMENT

16. SALARY/WAGE AT TERMINATION PER ☐ YEAR ☐ MONTH ☐ WEEK

BASE PAY	OVERTIME	COMMISSIONS	BONUS
$	$	$	$

17. REASONS FOR LEAVING

18. POSITION HELD

PART IV – CERTIFICATION

Federal statutes provide severe penalties for any fraud, intentional misrepresentation, or criminal connivance or conspiracy purposed to influence the issuance of any guaranty or insurance by the VA Administrator, the USDA, FmHA Administrator, the HUD/FHA Commissioner, or the HUD/CPD Assistant Secretary.

19. SIGNATURE

20. TITLE OF EMPLOYER

21. DATE

This form is used to verify the employment and income of applicants for FmHA services. Since eligibility for FmHA assistance is based partially on income, information collected is necessary to determine applicants' eligibility for FmHA loans and grants.

Form FmHA 1960-12
(Rev. 9/85)

Position 3

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

FINANCIAL FARM ANALYSIS SUMMARY

NAME			LOAN TYPES		COUNTY	AGES *(Borrower, Co-Borrower, and others)*		
		YEAR	19	19	19	19	19	19
FINANCIAL	Real Estate Present Market Value *(Approx.)*							
	FmHA Real Estate Debt(s)							
	Other Real Estate Debt(s)							
	Basic *(Livestock & Machinery)* Current Market Value							
	FmHA Chattel Secured Debt(s)							
	Other Chattel Secured Debt(s)							
	Open Account(s)							
	Net Worth							
	Is Security Adequate?	Real Estate						
	Yes or No	Chattel						
	Sales Listed on Form FmHA 1962-1							
INCOME	Gross Farm Income	Planned						
		Actual						
	Crop Sales	Planned						
		Actual						
	Livestock Sales	Planned						
		Actual						
	Outside Income	Planned						
		Actual						
EXPENSES	Family Living	Planned						
		Actual						
	Farm Operating	Planned						
		Actual						
	Capital Purchases	Planned						
		Actual						
	Net Farming Profit or Loss							
PAYMENTS	FmHA Annual Operating Advances							
	FmHA Collections	Planned						
		Actual						
	Paid on Other Debts	Planned						
		Actual						

☆ U.S. GOVERNMENT PRINTING OFFICE 1986 -617-102/40010

NATIONAL APPEALS STAFF

STATISTICAL REPORT

QUARTER ENDING SEPTEMBER 30, 1989

The National Appeals Staff and new regulations became effective July 12, 1988.

Part I of the following report provides statistics on the quarter beginning July 1, 1989 and ending September 30, 1989. Part II of the report includes cumulative statistics from July 1988 - September 1989.

PART I

July 1, 1989 - September 30, 1989

NATIONAL APPEALS STAFF - CASELOAD REPORT
Fourth Quarter FY 89

		TOTALS			
Appeals Received	RH	684			
	FP	1805			
	MFH	57			
	CP	3			
	B&I	1			
Total		2550			
Hearings Held	RH	236			
	FP	1136			
	MFH	17			
	CP	2			
	B&I	1			
Total		1392			
Decisions Rendered After Hearing		R	U	M	
	RH	73	108	3	184
	FP	268	519	42	829
	MFH	1	10	1	12
R=Reversed U=Upheld M=Modified	CP	0	1	0	1
	B&I	0	1	0	1
Total		342	639	46	1027
Cases Withdrawn	Settled As a Result of the Hearing Process	189			
	Withdrew But Not a Result of the Hearing Process	263			
Total		452			

NATIONAL APPEALS STAFF - CASELOAD REPORT
Fourth Quarter FY 89

		EASTERN AREA	SOUTHERN AREA	WESTERN AREA
Appeals Received	RH	226	349	109
	FP	662	622	521
	MFH	22	26	9
	CP	2	1	0
	B&I	0	0	1
Total		912	998	640
Hearings Held	RH	90	99	47
	FP	425	271	440
	MFH	3	6	7
	CP	2	0	0
	B&I	0	1	0
Total		521	377	494

		EASTERN AREA			SOUTHERN AREA			WESTERN AREA		
		R	U	M	R	U	M	R	U	M
Decisions Rendered After Hearing	RH	23	39	1	44	45	0	6	24	2
	FP	61	168	14	91	133	3	116	218	25
	MFH	1	3	0	0	1	0	0	6	1
R=Reversed U=Upheld M=Modified	CP	0	1	0	0	0	0	0	0	0
	B&I	0	0	0	0	1	0	0	0	0
Total		85	211	15	135	180	3	122	248	28

		EASTERN AREA	SOUTHERN AREA	WESTERN AREA
Cases Withdrawn Total	Settled As a Result of the Hearing Process	15	167	7
	Withdrew But Not a Result of the Hearing Process	96	40	127
Total		111	207	134

PART II

CUMULATIVE

July 12, 1988 - September 30, 1989

NATIONAL APPEALS STAFF - CASELOAD REPORT
As of September 30, 1989

		TOTALS			
Appeals Received	RH	3261			
	FP	5933			
	MFH	255			
	CP	37			
	B&I	16			
Total		9502			
Hearings Held	RH	1724			
	FP	2659			
	MFH	136			
	CP	30			
	B&I	12			
Total		4561			
Decisions Rendered After Hearing		R	U	M	
	RH	560	872	30	1462
	FP	617	1221	97	1935
	MFH	33	85	7	125
R=Reversed U=Upheld M=Modified	CP	3	23	0	26
	B&I	5	5	1	11
Total		1218	2206	135	3559
Cases Withdrawn	Settled As a Result of the Hearing Process	404			
	Withdrew But Not a Result of the Hearing Process	980			
Total		1384			

NATIONAL APPEALS STAFF - CASELOAD REPORT
As of September 30, 1989

		EASTERN AREA			SOUTHERN AREA			WESTERN AREA		
Appeals Received	RH	1264			1533			464		
	FP	2154			1957			1822		
	MFH	80			115			60		
	CP	14			8			15		
	B&I	3			8			5		
Total		3515			3621			2366		
Hearings Held	RH	638			795			291		
	FP	940			630			1089		
	MFH	37			61			38		
	CP	11			6			13		
	B&I	2			7			3		
Total		1628			1499			1434		
Decisions Rendered After Hearing		R	U	M	R	U	M	R	U	M
	RH	176	310	19	315	385	2	69	177	9
	FP	162	367	37	229	295	9	226	559	51
	MFH	8	22	3	21	37	0	4	26	[illegible]
R=Reversed U=Upheld M=Modified	CP	1	7	0	1	5	0	1	11	0
	B&I	0	1	1	2	4	0	3	0	0
Total		347	707	60	568	726	11	303	773	64
Cases Withdrawn	Settled As a Result of the Hearing Process	53			307			44		
	Withdrew But Not a Result of the Hearing Process	356			314			310		
Total		409			621			354		

NAS - EASTERN AREA - RUM REPORT
As of September 30, 1989

		RH			FP			MFH			CP			B & I			Totals		
Decisions Rendered After Hearing		R	U	M	R	U	M	R	U	M	R	U	M	R	U	M	R	U	M
	CT	2	3	0	0	2	0										2	5	0
	DE	0	1	0	0	0	1										0	1	1
	IL	1	11	1	6	22	2	0	0	1	0	3	0				7	36	4
	IN	12	17	1	13	13	2	0	1	0	0	2	0				25	33	3
	IA	1	9	1	18	56	5	0	2	0							19	67	6
	KY	8	15	1	5	30	2	0	2	0	0	1	0				13	48	3
	ME	9	3	0	2	12	0				1	0	0				12	15	0
	MD	5	13	0	0	2	0	0	1	0							5	16	0
	MA	2	14	0													2	14	0
	MI	26	52	2	13	21	1	2	3	0							41	76	3
	MN	5	19	1	23	56	9	0	1	0				0	1	0	28	77	10
	MO	11	14	1	23	39	5	1	0	0							35	53	6
	NH	1	3	0				0	1	0							1	4	0
	NJ	7	8	2	0	1	0										7	9	2
	NY	13	16	0	6	5	1	0	4	0							19	25	1
	OH	19	31	2	19	31	2	3	2	0							41	64	4
	PA	3	7	1	6	20	0	0	1	0	0	2	0				9	30	1
	RI	1	1	0													1	1	0
	VT	1	3	0	0	1	0	1	0	0							2	4	0
	VI	1	1	0													1	1	0
	VA	31	24	2	6	4	1	0	3	0							37	31	3
	WV	3	6	0	1	3	0	1	1	0							5	10	0
	WI	14	39	4	21	49	6	0	0	2				0	0	1	35	88	13
Total		176	310	19	162	367	37	8	22	3	1	7	0	0	1	1	347	707	62

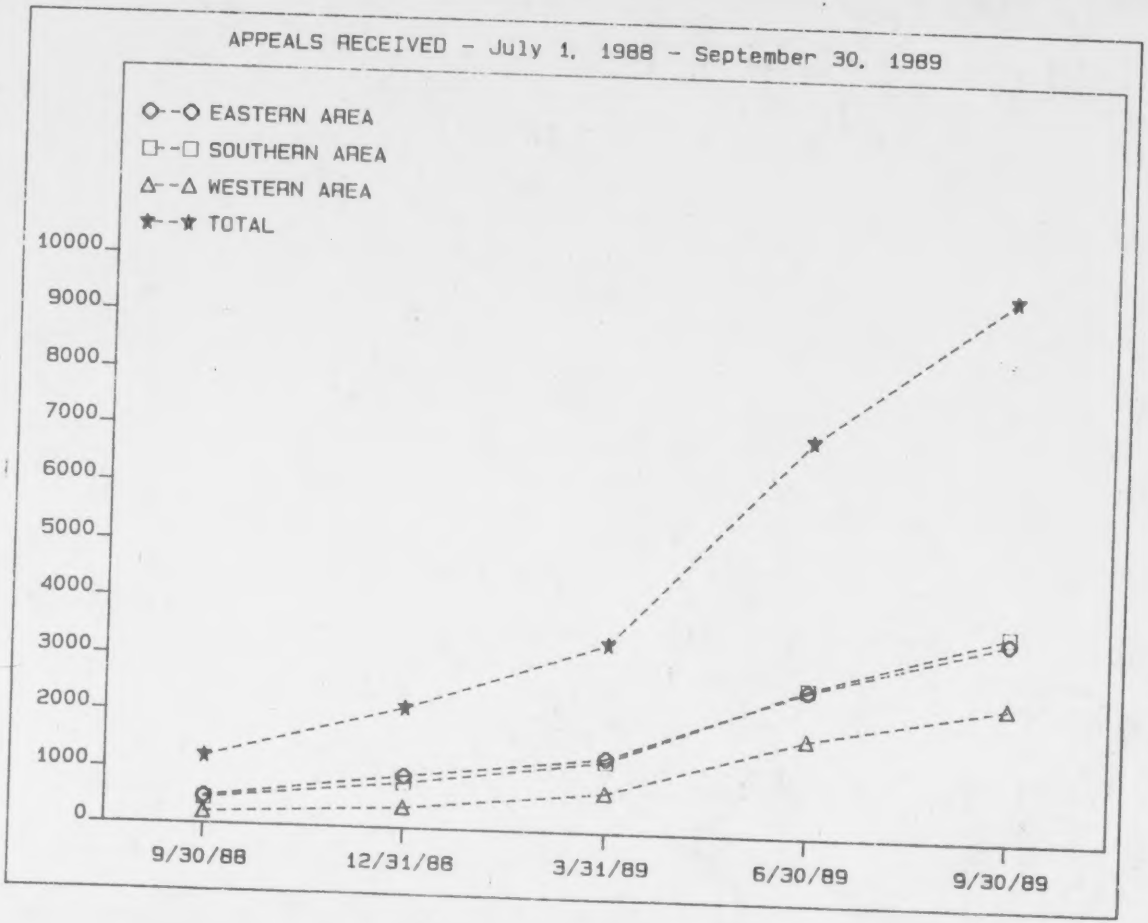
NAS - SOUTHERN AREA - RUM REPORT
As of September 30, 1989

		RH			FP			MFH			CP			B & I			Totals		
		R	U	M	R	U	M	R	U	M	R	U	M	R	U	M	R	U	M
Decisions Rendered After Hearing	AL	32	51	0	6	17	1	6	3	0							44	71	1
	AZ	4	2	0													4	2	0
	AR	28	28	1	13	13	1	0	1	0							41	42	2
	FL	25	40	0	8	24	0	1	2	0				0	1	0	34	67	0
	GA	35	51	0	17	19	0	2	6	0	0	3	0	1	0	0	55	79	0
	LA	40	25	0	23	33	3	1	3	0				0	1	0	64	62	3
	MS	45	45	0	27	26	1	2	11	0							74	82	1
	NM	4	0	0	2	0	0				0	1	0				6	1	0
	NC	25	57	0	20	45	0										45	102	0
	OK	15	10	0	20	32	1	1	3	0	1	0	0	0	1	0	37	46	1
	PR	5	9	0	9	6	0	0	1	0				0	1	0	14	17	0
	SC	11	26	0	9	4	0	1	0	0							21	30	0
	TN	23	21	0	20	24	0	1	7	0							44	52	0
	TX	23	20	1	55	32	2	6	0	0	0	1	0	1	0	0	85	73	3
Total		315	385	2	229	295	9	21	37	0	1	5	0	2	4	0	568	726	11

*Arizona and New Mexico were listed in the Southern Area from 7/88 to 9/88 when they were changed to the Western Area.

NAS - WESTERN AREA - RUM REPORT
As of September 30, 1989

		RH			FP			MFH			CP			B & I			Totals		
Decisions Rendered After Hearing		R	U	M	R	U	M	R	U	M	R	U	M	R	U	M	R	U	M
	AK	1	1	0													1	1	0
	AZ	0	15	0	2	11	2										2	26	2
	CA	14	19	2	15	38	4	0	8	0							29	65	6
	CO	4	15	0	10	21	3	1	2	2	0	2	0				15	40	5
	HI	0	1	0	0	1	0										0	2	0
	ID	4	9	0	9	25	7	1	2	0							14	36	7
	KS	4	8	0	11	80	6	1	0	0	0	4	0				16	92	6
	MT	2	6	1	19	43	0	0	2	0	0	1	0				21	52	1
	NE	15	7	0	20	61	4	0	6	0				1	0	0	36	74	4
	NV	0	3	0	2	13	0										2	16	0
	NM	4	19	2	10	15	6										14	34	8
	ND	5	16	0	48	107	8				0	1	0	1	0	0	54	124	8
	OR	9	22	0	7	25	1	1	1	1	1	2	0				18	50	2
	SD	0	8	1	58	87	3	0	3	0	0	1	0	1	0	0	59	99	4
	UT	1	6	0	4	6	0										5	12	0
	WA	4	12	1	8	20	5	0	1	0							12	33	6
	WY	2	10	2	3	6	2	0	1	1							5	17	5
Total		69	177	9	226	559	51	4	26	4	1	11	0	3	0	0	303	773	6


APPEALS RECEIVED - July 1. 1988 - September 30. 1989
○--○ EASTERN AREA
□--□ SOUTHERN AREA
△--△ WESTERN AREA
★--★ TOTAL
10000
9000
8000
7000
6000
5000
4000
3000
2000
1000
0
9/30/88
12/31/88
3/31/89
6/30/89
9/30/89

Farmer Mac,
Federal Agricultural Mortgage Corporation,
Washington, DC, July 18, 1989.

The Honorable **Dan Quayle,**
President of the United States Senate, Washington, DC.

Dear Mr. President: In accordance with subsection 8.6(c)(4) of the Farm Credit Act of 1971 (the act) we are pleased to submit herewith for congressional review the loan diversification standards for qualified loans to be pooled as collateral for securities issued in the agricultural mortgage secondary market with the guarantee of the Federal Agricultural Mortgage Corporation ("Farmer Mac"). In conjunction with this submission, we are also pleased to enclose for your information the Eligibility Standards for Certified Facilities, established on June 30, 1989, in accordance with subsection 8.5(a)(1) of the act.

Farmer Mac was federally chartered in January 1988. Pursuant to the act, Farmer Mac's interim Board of Directors was appointed by President Reagan in April 1988, and the oath of office was administered in May 1988. By-laws were adopted in July 1988. An initial stock offering was made during November 1988 to meet the minimum $20 million capitalization level required under the act as a condition of the appointment and election of Farmer Mac's permanent Board of Directors. The Board of Directors, which is composed of 5 members appointed by the President from the public sector; 5 members from the commercial banking and insurance industries; and 5 members from the Farm Credit System was elected and held its first meeting on March 2, 1989.

In the course of formulating these standards, Farmer Mac has utilized the expertise of agricultural economists, and consulted extensively with prospective originators and certified facilities (commonly known as "poolers") both within and outside of the Farm Credit System, as well as many other interested groups. A Committee of the Farmer Mac Board of Directors was formed for developing these standards. Drafts of these standards were produced by the Committee then reviewed, modified and approved by the Board of Directors.

Prior to the submission of these standards, we have already achieved several milestones on the other standards required for the start-up of the Farmer Mac programs. On June 30, 1989, we submitted for congressional review the uniform underwriting, security appraisal and repayment standards for qualified loans, and we adopted Eligibility Standards for Certified Facilities, which are enclosed herewith for your information. Particularly in the course of our work on the eligibility standards, we have become better acquainted with the complex relationships that exist among the small and large institutions that are Farmer Mac stockholders. Farmer Mac is firmly committed to the principle that the relationships between the poolers and the numerous small rural banks that purchased Farmer Mac stock must be fair and reasonable, and that every small bank should have a fair chance to participate in these programs. This goes to the essence of Farmer Mac's mission of increasing the availability of long-term credit to farmers and ranchers at stable interest rates, and we believe this is reflected in the eligibility standards.

We appreciate your review of these documents and stand ready to assist you in whatever manner you deem appropriate.

Respectfully yours,

John R. Dahl,
Chairman.
Henry D. Edelman,
President.

Farmer Mac,
Federal Agricultural Mortgage Corporation,
Washington, DC, July 19, 1989.

The Honorable **Kent Conrad,**
U.S. Senate, Washington, DC.

Dear Senator Conrad: We are pleased to have this opportunity to provide you with a courtesy copy of the loan diversification standards established by the Federal Agricultural Mortgage Corporation ("Farmer Mac"), as submitted by letter dated July 18, 1989, to Congress for review pursuant to the provisions of the Farm Credit Act of 1971 (the act). Because the Committee on Agriculture, Nutrition, and Forestry has jurisdiction over the standards, we anticipate that the official submission will be referred to your subcommittee for review in a few days.

Section 8.6(c) of the act requires the development of loan diversification standards by Farmer Mac "to reduce the risks incurred . . . in providing guarantees" of pools of loans under the secondary market for agricultural mortgage loans. Subsection (c)(4) of section 8.6 provides that these standards shall not take effect prior to the expiration of a period for congressional review, expected to be 90 calendar days. The attached letter provides a brief summary of the process we followed in developing these standards.

In addition, for your information we are enclosing a copy of the Eligibility Standards for Certified Facilities, established by Farmer Mac on June 30, 1989, in accordance with section 8.5(a) of the act. These standards were raised for discussion during the July 14, 1989, meeting of the Farmer Mac Board of Directors but no changes were made at that time. Under the statute, the standards became effective on the date of their initial adoption by Farmer Mac in June.

The Board of Directors and management of Farmer Mac look forward to working with you as the congressional review proceeds. If you or your staff have any questions we will be glad to respond at any time.

Respectfully yours,

JOHN R. DAHL,
Chairman.
HENRY D. EDELMAN,
President.

[Loan Diversification Standards, dated July 18, 1989, and other material follows:]

FEDERAL AGRICULTURAL MORTGAGE CORPORATION

"Farmer Mac"

Loan Diversification

Standards

Submission to
the
U.S. Congress

July 18, 1989

LOAN DIVERSIFICATION STANDARDS OF THE FEDERAL AGRICULTURAL MORTGAGE CORPORATION

In order to reduce the risks incurred by the Federal Agricultural Mortgage Corporation (FAMC) ~~in~~ providing guarantees of securities collateralized by Qualified Loans (as defined by the Farm Credit Act of 1971, as amended), each such pool shall meet the following diversification standards.

1. Qualified Loans in a pool collateralizing a securities issue submitted to FAMC for guarantee shall be secured by agricultural real estate or rural housing that is widely distributed geographically. This shall be accomplished by drawing loans from at least three of the ten U.S. Department of Agriculture regions of the United States (as shown on the attached map): Northeast, Appalachia, Southeast, Lake States, Corn Belt, Delta States, Northern Plains, Southern Plains, Mountain and Pacific. No more than forty percent of the total principal amount of the loans in a pool may be drawn from any one region. Notwithstanding the specific language of this standard, FAMC reserves the right to reject any pool that does not comply with the spirit of this standard.

2. Qualified Loans in a pool collateralizing a securities issue submitted to FAMC for guarantee shall vary widely in their initial principal amount. At least five percent by principal amount of each pool shall be comprised of agricultural real estate loans (other than rural housing loans) with a principal amount less than one hundred thousand dollars.

3. In the case of a pool collateralized by Qualified Loans used in the production of agricultural commodities, each such pool collateralizing a securities issue submitted to FAMC for guarantee shall be secured by land used in the production of a wide range of agricultural commodities. No pool may have more than the lesser of either: (i) three times the national percentage share in total cash receipts and government payments (combined), or (ii) 40% of its total loans by principal amount in loans secured by land used for the production of any one of the following commodity groups:

   a. food grains
   b. feed crops
   c. cotton/tobacco
   d. oilseeds
   e. potatoes, tomatoes, and other vegetables
   f. permanent plantings (citrus, grapes and other fruits and nuts)
   g. sugarbeets, cane and other crops
   h. greenhouse/nursery products and mushrooms
   i timber
   j. dairy
   k. cattle and calves
   l. hogs
   m. sheep, lambs and other livestock
   n. broilers
   o. turkeys and other poultry
   p. eggs

The specific national percentage shares for these groups will be published as a supplement to FAMC's Securities Guide, and may be revised from time to time. Each year, FAMC will review when publicly available the U.S. Department of Agriculture's report on "Economic Indicators of the Farm Sector: State Financial Summary" for the prior year and determine whether to update this standard. Adjustments may be made to the data in that report to reflect actual market activity when and as appropriate.

4. No loan shall be in a principal amount that exceeds three and one-half percent of the aggregate principal of all loans in the pool in which it is included.

5. No loan collateralizing a securities issue submitted to FAMC for guarantee shall be made to a borrower related to another borrower (i.e., individuals who are related to one another by blood or marriage as husband, wife, parent, child, brother or sister; in the case of two or more entities, the stockholders, partners, or joint operators holding a majority interest of each entity are not similarly related by blood or marriage.)

6. Each pool shall consist of not less than fifty loans.

7. FAMC may, on a pool-by-pool basis, accept a pool of loans that does not conform to preceding standards 1 and 3 when, in its judgment, substantial compliance has been made with both standards and the pool demonstrates strength on one of these two standards though it does not strictly comply with the other.

Notes:

1. The commodity designation is to be determined based on the use of the property being financed; it is to be the responsibility of the originator to pro rate the use of the property among commodity groups, based on the typical use expected for the property, by the total principal amount of the loan.

2. The following is a list of the individual commodities and crops included in the preceding commodity groups (as reported in the U.S. Department of Agriculture's report on "Economic Indicators of the Farm Sector: State Financial Summary".):

   a. Food Grains
      -wheat
      -rice
      -rye

   b. Feed Crops
      -corn
      -sorghum
      -barley
      -oats
      -hay
      -silage

   c. Cotton/Tobacco
      -cotton lint
      -cottonseed
      -tobacco

d. Oilseeds
- -flaxseed
- -peanuts
- -soybeans
- -sunflower
- -safflower
- -sesame

e. Potatoes, Tomatoes and Other Vegetables
- -beans, dry
- -peas, dry
- -lentils (beans)
- -potatoes
- -sweetpotatoes
- -taro
- -asparagus
- -beans, snap
- -beets
- -broccoli
- -cabbage
- -carrots
- -cauliflower
- -celery
- -corn, sweet
- -cucumbers
- -eggplant, all
- -escarole
- -lettuce
- -onions
- -peas, green
- -peppers, green
- -peppers, chili
- -spinach
- -tomatoes
- -radishes
- -squash
- -misc. vegetables
- -cantaloupes
- -honeydews
- -watermelons
- -casaba melons
- -crenshaw melons

f. Permanent Plantings (Citrus, Grapes and Other Fruits and Nuts)
- -grapefruit
- -lemons
- -limes
- -oranges
- -tangelos
- -tangerines
- -K-early citrus
- -apples
- -apricots
- -avocados
- -cherries
- -dates
- -figs
- -grapes
- -nectarines
- -olives
- -peaches
- -pears
- -persimmons
- -pineapples
- -plums & prunes
- -pomegranates
- -coffee
- -bananas
- -papayas
- -kiwi fruit
- -mangos
- -cranberries
- -strawberries
- -blueberries
- -raspberries
- -blackberry group
- -other berries
- -almonds
- -filberts
- -pecans
- -walnuts
- -macadamia nuts
- -pistachios
- -misc. fruits & nuts

g. Sugarbeets, Cane and Other Crops
- -maple products
- -sugar beets
- -cane for sugar
- -alfalfa
- -bentgrass
- -bluegrass - Kentucky
- -crimson clover
- -fescue
- -ochardgrass
- -red clover
- -ryegrass
- -sorghum sudan
- -other seeds
- -hops
- -mint
- -popcorn
- -other field crops

h. Greenhouse/Nursery Products and Mushrooms

i. Timber

j. Dairy
- -milk
- -dairy cattle and calves

k. Cattle and Calves
  - beef cattle and calves

l. Hogs

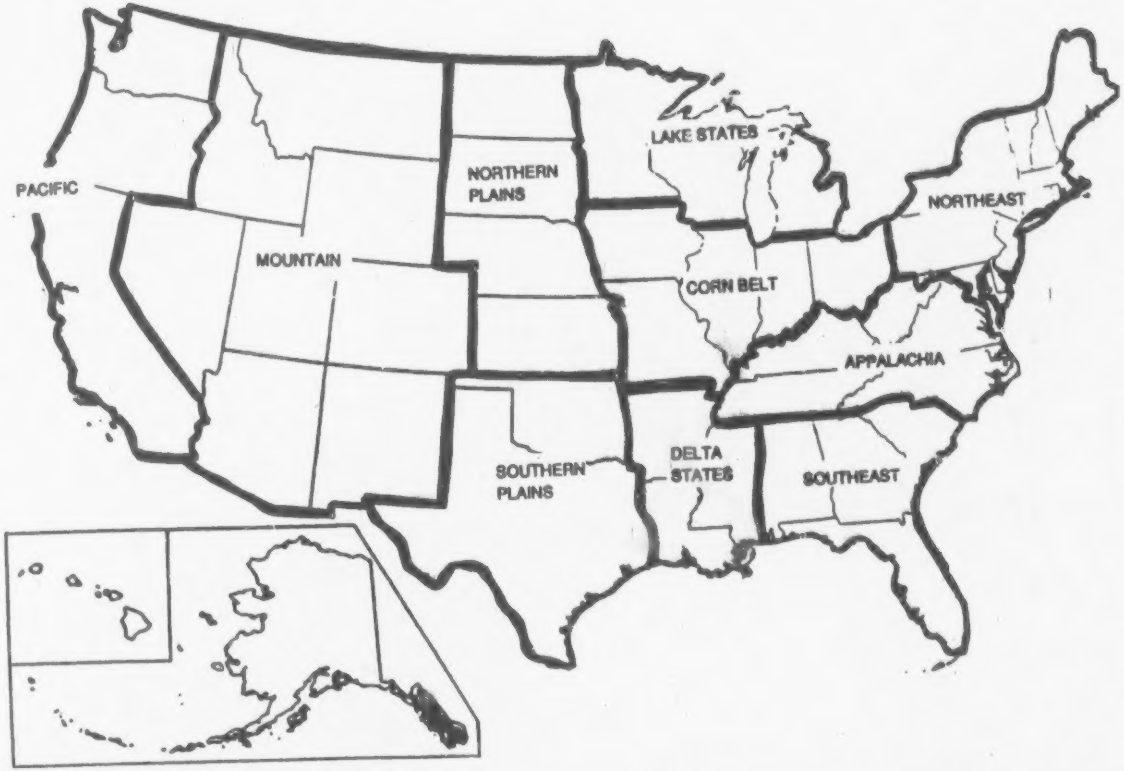
m. Sheep, Lambs and Other Livestock
  - sheep and lambs
  - bees
  - honey
  - horses/mules
  - mohair
  - wool
  - aquaculture
  - other livestock

n. Broilers

o. Turkeys and Other Poultry
  - turkeys
  - farm chickens
  - ducks
  - other poultry

p. Eggs
  - chicken eggs

U.S.D.A. REGIONS


PACIFIC
MOUNTAIN
NORTHERN PLAINS
LAKE STATES
CORN BELT
NORTHEAST
APPALACHIA
SOUTHERN PLAINS
DELTA STATES
SOUTHEAST

July 28, 1989

Honorable Kent Conrad
Chairman of the Sub-committee on Agriculture Credit
Committee on Agriculture
United States Senate
Russell Bldg. 328
Washington D. C. 20510

Attention: To Be Submitted To Senate Agricultural Hearing Record For Hearing

Dear Senator Conrad:

We am taking this opportunity to let you know what's going on. The Farmers Home Administration has driven me off my dairy farm. They are in the process of foreclosing on us. All this is due to stray voltage and FmHA's ineptness. If they had followed their policies and procedures we never would have been bothered by stray voltage in our dairy barn. It took us 8 months to find and correct the problem of stray voltage in the dairy barn, and by that time our entire 102 cow dairy was damaged to the extent that it made repayment to the FmHA loan impossible. FmHA has not given us access to the valuable programs that are currently available to help us recover from this severe catastrophe. They won't recognize the fact that our whole problem is due to stray voltage. Congress has appropriated moneys for the past ten years for stray voltage research. USDA recognizes that stray voltage affects 25% of the dairy farms in America. USDA was alerting through the Rural Electric Administration farmers of the stray voltage problem as early as Sept. 24, 1981. USDA also sponsored in cooperation with the National Rural Electric Cooperative Association: STRAY VOLTAGES IN AGRICULTURE: SUMMARY PROCEEDINGS OF STRAY VOLTAGE WORKSHOP AUGUST 1983 MINNEAPOLIS, MN.

We need you to apply political pressure to FmHA to make them follow the laws that you have already passed. Forced bankruptcy because of FmHA's stubbornness is wrong and shouldn't be put up with. Most farmers have had to give up without a fight with no one the wiser. We don't intend to. We need your help to stay in business and to insure that other farmers don't have to go through this same nightmare. This mess has proceeded to the point that the only thing we can find to save our farm is an Emergency Declaration by President George Bush. Would the U. S. Senate please help us do this. Enclosed you will find the operating history of our dairy farm. It documents the law and what FmHA has done in breaking the law.

Respectfully,

Robby and Farilyn Webb
Rt. 1, Box 429
Powderly, TX 75143
(214) 732-4218

OPERATING HISTORY OF WEBB RANCH
by Robby Webb

3/4/87 $168,000.00 loan secured with a 7-year pay-back. $2,660.00 monthly payments. Started soon after with Associated Milk Producers, Inc. (AMPI). 5/7/87
Dairy barn ready to go. New equipment installed and checked by AMPI. Given go ahead by them to start production.

5/11/87 Started operations with cattle in barn.

5/30/87 Milk assignment changed from $2,660.00 per month to $500.00 and milk assignment made for $6,440.00 to start 9/15/87 until 12/15/87 to get loan current. Lack of cash flow and problems with cows the cause.

6/16/87 Visited the office of county supervisor and told him of trouble. Can't pay bills or operating expenses. Had not planned for cow trouble. He released $7,000.00 that was to be used to buy cows to get current with feed bills and operating expenses. Don't know stray voltage is the trouble with the cows. But trouble definitely beginning.

6/22/87 AMPI out and ran a System Analysis. They said everything checks out OK.

6/30/87 Still having trouble. Had Larry Henry, AMPI Supervisor come out and run tests. Didn't find anything wrong.

7/24/87 First, Dairy Herd Improvement Association test for the trouble. Bad cows kicking won't stand still for milking; cows won't enter barn to be milked. They have swollen udders, bad feet — going lame, running eyes — not a pretty sight. **Mastitis** in half of the cows. It is terrible!

8/1/87 Veterinarian, Dr. Lyle Nottingham, says all this trouble due to stray voltage. Have no idea what stray voltage is, but am going to find out. Learned, but too late now. Dumping milk and giving medicine to 20 cows. Turn cows dry early to get them out of barn. It's terrible. Can't pay feed bill, electric bill, or vet bill. I am behind on bills to everybody! 9 cows had to be culled. They were ruined — udders hard, feet swollen; 1 cow died. **Call AMPI to ask for help.** Larry Henry said if it was stray voltage nothing AMPI could do. He told me to call Lamar County Electric Co-op. I did and Tommy Parker, their chief engineer, came out. He checked power line and found it to be safe — no stray voltage. We then went in dairy barn and he checked parlor out with voltmeter and found 20 volts on two feed stalls. He advised me to run grounds between all feeders and to change out two timer switches. I called AMPI and told Larry Henry what we found and what we needed and he sent Dennis James, an AMPI serviceman, to do the repair work. One week later Tommy Parker of Lamar County Co-op came back to help me see if the stray voltage was gone. It was. The electric company was very good to help me.

8/6/87 **More money trouble.** Can't pay $800.00 electric bill. Behind $3,000.00 on feed bill. Behind on vet bill. I go to Farmers Home Administration (FmHA) county supervisor. Tell him all about this trouble, but that I found out it was stray voltage causing it. I am behind in all these bills and he says **no money, no feed, no electric, no vet.** County supervisor releases loan funds of $2,427.25 to pay current feed bill, though the money was ear-marked to buy cattle. I tell county supervisor that we are still behind in electric bill, vet bills, and other farm operation/living expenses. What are we going to do. This is terrible, I didn't plan for all this trouble. Please, God, help me. Why is this happening to me! County supervisor says that's all he can do. I said we have got to do more and I want to use money from 9 culled cows to get us out of this trouble. He said, "No, you can't do it." Yet, by law he should have. Per FmHA Instruction 1962.17 (b) "When proceeds from the disposition of security are to be used to pay essential family living or farm operating expenses, County Supervisors must approve the disposition." And the 9 culled cows were ruined and would further contaminate my remaining herd due to a high somatic cell count. They were treated with medicine by the vet, Dr. Nottingham, but the stray voltage caused such stress in the cows that the medicine had no effect. I told him we were at war and we had to win at all costs. I left office feeling very stressed. I knew that chattel security had to be applied to note, and not to pay expenses, but I also knew I was in trouble through **no fault of my own and I had to win this war!**

9/14/87 Visited county supervisor's office and told him that in my opinion things were a little better, but still bad. We would work out of it. I then asked for his personal attention to tell him I had used the funds from 9 culled cows to pay farm operating and family living expenses. I acted in good faith because we would have been out of business. When I say "we," I mean **Robby Webb and the United States of America.** County supervisor informed me that the cows or money would have to be replaced. Where did he think they were going to come from — out of the sky?!

9/15/87 Before I was through milking that morning, the assistant county supervisor, Sammy Dobbs, paid me a visit. He said he was there to do a chattel security check. (They must think I am lying or stealing or both.) I asked why didn't he come when we were having so much trouble! He counted 84 head which made 9 short — just like I told them the day before. He told me I was in serious trouble. I said what do you mean? He said selling those 9 cows without the county supervisor giving me permission was the trouble. And did I know I could go to jail for selling mortgaged property? I looked him up one side and down the other and told him I knew I was in serious financial trouble, but I was not a thief. We had to pay electric bill, feed bills, and vet bills and family living expenses to get us through this crisis and, thank God, we did. He said I had to either replace the cows or money or I was in serious trouble. He saw 24 bull calves I was raising and told me to sell those and use the money to go toward the cow money. I said they wouldn't bring in enough money. He said feed them til they do! I agreed because I knew the money had to be replaced. I sure was in a deep hole, but was determined to crawl out.

9/19/87 Received letter from FmHA county supervisor dated 9/18/87. I read it and I sure did get mad! First off the 9 cows sold for $4,847.34. The county supervisor just dreamed up a bigger figure of $6,750.00 — from where I don't know! If I don't comply, he would refer this to the U. S. Attorney for action. I was hot!

9/29/87 I went to the county supervisor's office and told him I didn't like his letter dated 9/18/87. He said pay money back by raising 24 bull calves and everything OK. We went over records and I am really behind the eight ball. Why did all this happen to me. There has got to be a reason, but God only knows what it is! Wish He would tell me!

10/1/87 Cows that we turned dry in July and August are starting to come fresh, plus 12 heifers from Missouri.

10/15/87 Cows starting to do some better. Milk production up. Changed feed and go with Farmer's Co-op in Sulphur Springs, Texas. Cows relaxing. They, this is starting to get fun!

11/15/87 Cows milking good, but I start noticing little things wrong out of certain cows. I start to study them. Surely, there can't be anything wrong. I am paying all my bills. I am just about to get caught up on my past bills. The new heifers are milking 70 lb. average. I love it. This is the way it was supposed to be. This is fun.

12/1/87 I am noticing more things. Udders seem to be getting bigger — a little more every day, but milking 53 lb. average.

12/7/87 Two weeks straight of rain. Cows not wanting to come in to barn. Starting to kick. Some won't stand still, jump in feed trough. **Mastitis starting all over again.** Udders are getting hard, manure going everywhere. It's a mess.

12/14/87 Sold 24 bull calves for $5,200.00.

12/15/87 I start calling AMPI. I tell them something wrong. He said there is nothing he can do. Vet, Dr. Nottingham, says stray voltage got to be all it can be. Please God not again! Taking too long to milk. Cows don't like it, manure everywhere! **Call AMPI — won't come.**

12/19/87 **Sunday worst day in my whole life. I am sick of this. I start to cry and pray to God to help me find where stray voltage is coming from.**

12/20/87 Call Ronald Green at Green Electric and tell him I need a master electrician to go all through my dairy barn. He spends 3 days looking and checking and he keeps finding 1.7 volts of electricity getting to cows some how. He has got to find it. Cows don't want to get up — just lying around, looking hurt and sick. **Call AMPI and tell them this an emergency. He said if stray voltage can't come.**

12/22/87 **Call AMPI Arlington.** Talk to Sonny Pride. Tell him my trouble. He said he could and would have somebody come help me. **It's bad. It's sickening. I can't stand it, but I've got to.**

12/23/87 Call Lamar County Electric Co-op and they send crew out and we install stray voltage blocker on transformer pole for insurance. Stray voltage not from Co-op. Ronald Green finds where stray voltage coming from. It's from 10 electric feed timers. He says we need to replace timers. We do and stray voltage gone. Watching is Dr. Nottingham, Ronald Green, Dewayne Howard and me. I am sick of this mess. What can I do? Stray voltage gone, which is good, but look at all the troubles I have got. To make a long story short — I lose 16 cows (completely ruined), turn cows dry early again. Go to dumping milk, but guess what? God had answered my prayer because we found where stray voltage was coming from and how to stop it, and, even better — how to prevent it! And one little gift from Heaven came that day when AMPI fieldman, Jay Hicks, came to check equipment. He left me an **AMPI System Analysis Worksheet**. And guess what was on there — a stray voltage check list that should have been run, but wasn't. I grab it up, go to the house and pull out the other 2 worksheets and they show the same thing — **no stray voltage check**. Call Larry Henry. He said that he didn't know anything about it. **I said I do now! All this trouble would have been prevented if AMPI would**

have followed their own worksheet when they checked the barn on 5/7/87, they are going to pay!

1/1/88 Called J. D. Nichols, Manager Wood County Electric Co-op Quitman, TX, who is a long-time family friend and asked his advice concerning the stray voltage and what I should do. He said first I should send electric timers to a consulting engineer to have them test-run to tell why they went bad. Then call Coy Johnson, an attorney in Sulphur Springs, TX. Coy listened to my case and said 2 good attorneys in Paris were **Dick Payne** or **Webb Biard**, but whoever I got, make sure they like it and believed in me! Payne was too busy at the time and Webb Biard wanted case from the word go on the telephone!

1/15/88 After two meetings with Webb Biard, we drew up contract — he gets 1/3 of lawsuit. He sees where I am not at fault, but **AMPI is going to have to be accountable for their negligence.** Tell him all my trouble with FmHA. He understands and says we can work out of it, but won't be easy! Now serious side again. I am $5,000.00 behind again to creditors. They want their money and guess what? I have got $5,200 from sale of 24 bull calves sold 12/14/87 that is supposed to be used to pay back 9 culled cows or $4,847.34! What do I do? Pay feed, pay vet, pay electric, buy food — or just quit? No, I don't quit; FmHA will just have to understand this was no fault of our own, but we have got to stay in business and work out of this terrible mess!

1/28/88 Office visit with Billy Curb — FmHA county supervisor, Robby Webb and attorney Webb Biard. We informed county supervisor stray voltage had been found and corrected and that we were filing a lawsuit to recover my losses! Biard told the county supervisor 16 cows had been ruined because of the stray voltage, but I had the money and was going to buy cows with it. We then told the county supervisor the 24 bull calves had been sold for $5,200.00, but the money had been spent on **farm operating and family living expenses.** You could tell it made the county supervisor **mad!** I then asked for his special help to help us rebuild our dairy. Because of all the trouble with the stray voltage, I asked for a deferral of payments for 5 years. See letter dated 1/28/88. He said all records would have to be reviewed before decision made. He never gave an answer. But he should have been able to answer based upon the following federal statute:

7 CFR § 1951.44 Deferral of existing OL, FO, SW, FL, EM, EO, SL, RHF and EE loans.

. . . However, borrowers may request a defferal at the FmHA County Office when circumstances occur which will not permit borrowers to pay as scheduled . . .
(b) Conditions.
(1) The reasons for needing the deferral are due to circumstances which are beyond the borrower's control . . .
(i) A reduction of income which reduces the operation's cash flow to a point where outflows exceed inflows and which causes the need for a deferral . . .
(C) Natural disasters, an outbreak of uncontrollable disease, and/or uncontrollable insect damage which caused severe loss of agricultural production that reduced the repayment ability of the borrower so that scheduled payments cannot be made; . . .
(ii) Unplanned, but essential, farm expenses and/or, in the case of individual borrowers, essential family living expenses. Unplanned expenses are those which were not listed in the most current farm plan of operation and can be paid from the authorized sale of chattel security. Proceeds from such sales can be used for unplanned purposes only if FmHA releases such proceeds in accordance with Subpart A of Part 1962 of this chapter governing disposition of chattel security.

2/8/88 Locate 8 holstein heifers that out of DHIA herd, giving 20,000 lbs. average. Use money from 16 culled cows to pay for them. They are nice, all will calve next 60 days.

2/15/88 I spend the month of February talking on the phone with AMPI, Universal and Deltrol Controls. All give me run around talk about product liability, but don't see any money! I finally call Noble Anderson, Southern Region Manager of AMPI. He is the big man over 10 states/4,000 dairies/500 milk trucks — lots of power! He listens to my problem on phone and we make appointment for 3/1/88. He gives me 2 full hours in his big office in Arlington and Jim Carroll, asst. manager, there, too. They both listen and I explain that if stray voltage test had been run by AMPI on 5/7/87 when new equipment was checked, I wouldn't be in all this serious financial trouble. They told me if I could prove the electric timers were cause of stray voltage trouble that AMPI would help me recover my financial losses! Jim Carroll even told me of the problems other dairymen of AMPI had had with stray voltage — unbelievable! I had a witness with me, too, that day just in case — my cousin and bookkeeper Lavada Newell.

3/15/88 With the help of Webb Biard, we sent electric timers to the consulting engineering firm AID in Dallas to tell how and why timers went bad. The AID Consulting Engineers, Inc. report stated that the timers, according to the National Electrical Code were general purpose timers and they should **not** have been used in a dairy bar. If used in an environment where there was water and dust, as in a dairy barn, the timers would emit stray voltage. They were unsafe and would cause trouble.

4/21/88 Office visit with FmHA county supervisor. He had had my financial record books for one month to make his analysis of the business! We couldn't understand basic bookkeeping rules and said there was $20, 000 error (he really thought we were stealing). It took 2 weeks to prove him wrong! Set up with county supervisor new Farm and Home plan. The $6,426.00 per month payment was not used in the Debt Repayment Section and he understood I could not meet it at this time. We made application for $29,000.00 to buy 16 cows and operating money to plant new grass hay meadow (Tifton 44), plant grazing crops and improve all pastures! We had worked hard on this matter, but before he would take application I had to go to all my creditors and get a signed release that they would not sue to recover their losses. That was tough on me to do, but every one cooperated to the fullest! The loan showed to cash flow, pay off creditors and retire debt, I thought county supervisor was with us all the way. It would have gotten the loan out of trouble, which is what FmHA by law was designed to do, to meet its mission from Congress. FmHA is supposed to follow spirit as well as letter of law, but FmHA doesn't. They hurt a farmer financially and mentally with stress!

5/13/88 FmHA county committee meet to certify my new loan, I receive my answer by mail 5/15/88, and, boy, did I get mad! See #3 letter.

5/23/88 Office visit with county supervisor. I was very depressed, sick feeling. I asked county supervisor why I was rejected for my loan and what all this means. He said I have bad character as shown by the unauthorized sale of security. I don't have managerial ability and the industry necessary to carry out the proposed operation. I asked him if he told the county committee about all the trouble with stray voltage. He said no. I said don't you think that was important. Didn't you show them the letters of recommendation from my creditors supporting me in a situation that was caused strictly by stray voltage and not bad management. He said it was in the file if they wanted to look for it. He hadn't showed it to them. All they knew was that I had mastitis. How can they give a fair and just decision if they don't know all the facts?! I said I know you are not doing your job right and I want to know why! He said I sold those 9 cows back in July and August of 1987 without his authorization and I was now on a bad list with FmHA state office in Temple and that's why and I could appeal decision. I was boiling mad! I said we, no not "we", because that means me-and-you, I mean Robby Webb and United States of America were in a severe catastrophe and if I hadn't done what I did with the money from those 9 culled cows, we would have been out of business! He said again I had to have his permission and I didn't have it! That's kind of silly, because I **should** have had it according to the law. He and I had signed a contract called AGREEMENT FOR THE USE OF PROCEEDS/RELEASE OF CHATTEL SECURITY on 3/4/87. Under the paragraph "When Can Collateral Be Sold to Pay Essential Family Living and Farm Operating Expenses? — You agree to allow me to sell or exchange crops, livestock, and livestock products planned to be marketed in the regular course of business so that I can Pay essential family living and farm operating expenses. Essential expenses are those which are basic, crucial, or indespensable. You also agree to allow me to feed crops to livestock, if the livestock or livestock products are collateral for the FmHA loan. You also agree to allow me to use livestock for food for my family. If the crops, livestock, and livestock products planned to be sold in the regular course of business will not bring in enough income to pay all essential family living and farm operating expenses, you agree to allow me to sell other collateral to pay those expenses." That was just our contract! The federal statute says:

Federal statute CF7 § 1962.17
"Disposal of chattel security, use of proceeds and release of lien
(a) General. (Revised 4/23/86, SPECIAL PN.)
(1) The borrower must account for all security (which I did) and will be instructed of this requirement by the County Supervisor when a loan is made and as often afterward as necessary. When the borrower sells security, the property and proceeds remain subject to the lien until the lien is released by the County Supervisor. Purchasers of security who inquire should be informed that the property is subject to FmHA's lien and will remain subject to it until they deliver any proceeds in cash to the County Supervisor or make checks payable jointly to the borrower and FmHA and the check has cleared. When the borrower fails to account properly for security, the County Supervisor will take the actions required in § 1962.18 of this subpart. Releases of sales proceeds will automatically be terminated when either Exhibit D or E to Subpart A of Part 1955 of this chapter is sent to the borrower. Termination of such release will not occur prior to that time.

(2) Section 1924.57 of Subpart B of Part 1924 of this chapter requires that there must always be a current Form FmHA 1961-1 in the file of a borrower with a loan secured by chattels. If a borrower asks FmHA to release proceeds from the sale of chattels and there is not a current Form FmHA 1962-1 in the file, the County Supervisor will immediately begin working with the borrower to develop one. If the borrower's request for release is denied, the borrower must be given a Form FmHA 1924-14, a written explanation of the reason for the denial (which I was not given), and the opportunity for an appeal in accordance with Subpart B of Part 1900 of this chapter. The appeal hearing must be held within 20 days of the denial unless the borrower requests a longer time." Billy Curb, county supervisor, was not following our contract based the law. We wouldn't have to go through all this if the stray voltage had not happened to my cows through no fault of my own. The federal statute is designed to help farmers **out of trouble** when unforeseen

circumstances happen. Both the Government and I want to retire this debt as soon as possible. Mr. Curb should have been helping me and following the law and not trying to run me out of business.

What kind of people is FmHA made up of? I realize that the money has to be paid back, but again I was in trouble through no fault of my own and I used the funds to preserve the security that was left. FmHA just think they are going to drown me. They don't know how good I can swim even if it is upriver! We have got to win, going to win **tough times don't last, but tough people do! (*Seven Laws of Success*)**

6/1/88 AMPI visit in Arlington with:
Noble Anderson — Southern Regional Manager
Jim Carroll — Asst. Southern Regional Manager
Sonny Pride — Texas Division Manager
Webb Biard and Robby Webb.
We had the AID report to show AMPI that electric timers were defective and I had $416,000 in losses. We talked about AMPI not having trained personnel and proper equipment to check for stray voltage. They would not and did not give answer why. I had foolishly relied on the fact that they meant the statements they published in the advertising to get dairymen to join AMPI: "AMPI also offers a systems analysis program to test all AMPI installed equipment as a means to assure our member dairymen that their new milking system is operating at optimum capacity and efficiency. When you are ready to purchase and install new equipment, or if you want to set up an entire system, AMPI can help . . . AMPI service personnel continually undergo training by equipment manufacturers. And our representatives are up-to-date in servicing the ever-important area of refrigeration and the trowing area of electronically controlled systems. Dairy farming today includes more emphasis on the use of these innovative electronic systems than every before. AMPI has the most modern testing equipment available to diagnose electronic system malfunctions so our servicemen can follow through with speedy and accurate repair." **If they had done what they said they do, I would not have had any problem with stray voltage from the very beginning.** They said Jim Carroll would work on Universal Equipment Co-op. and Deltrol Controls to get my losses recovered, but they said they were at fault on liability! We told AMPI we would give them 2 months, then we were going to file suit under Texas Deceptive Trade Practices and that damages would be tripled because of way they had ripped me off and then it would be $1,200,000.00. We are tired of playing around, if you play you are going to pay!

6/17/88 Office visit with FmHA county supervisor. The damage stray voltage caused left me with 7 more cows that had to be culled. Behind on feed bill, electric bill. Need to pay rent. Ask this time in writing for county supervisor to release funds to pay farm operating and family living expenses. You guessed it — he still says NO! I am just trying to hang on and get by. Its terrible and he just adds more stress. He gets his paycheck, but he isn't earning it! We appealed his decision, it is hard to cope with FmHA when they won't follow the law. This is not right. Something has got to be done nationally to turn this bad situation around and help people that need help in the way Congress wrote the law and not run you out of business!

7/6/88 Office visit with FmHA county supervisor. Had 6 more cows to cull. Will it ever stop? Need money to pay farm operating and family living expenses. You guessed it — he said **no again. Appeal. Disgusted. Not my fault. Will I ever get out of all this trouble! Got to win lawsuit. This isn't my fault!**

8/6/88 **Important date!** Appeal hearing on $29,000.00 loan from FmHA. Webb Biard and I are prepared. We showed FmHA rules and regulation that said I could use money to pay farm operating and family living expenses. According to USDA-FmHA Form 1962-1 AGREEMENT FOR THE USE OF PROCEEDS/RELEASE OF CHATTEL SECURITY . . . **When Can Collateral Be Sold to Pay Essential Family Living and Farm Operating Expenses?** "You agree to allow me to sell or exchange crops, livestock, and livestock products planned to be marketed in the regular course of business so that I can pay essential family living and farm operating expenses. Essential expenses are those which are basic, crucial, or indespensable. You also agree to allow me to feed crops to livestock, if the livestock or livestock products are collateral for the FmHA loan. You also agree to allow me to use livestock for food for my family. If the crops, livestock, and livestock products planned to be sold in the regular course of business will not bring in enough income to pay all essential family living and farm operating expenses, you agree to allow me to see other collateral to pay those expenses." The statute behind it is CF7 §1962.17 Disposal of chattel security, use of proceeds and release of lien. . . . "When proceeds from the disposition of security are to be used to pay essential family living or farm operating expenses, County Supervisors must approve the disposition. (Revised 8/26/87, PN 62.)" But he didn't give his approval when he should have! FmHA county supervisor never gave any documentation to support is actions. We showed and talked about stray voltage not being my fault and causing all this trouble and about lawsuit. **You guessed it — appeal hearing said NO! What do you do?!?** Aren't they breaking the law by not following the law? I am going to beat them, **got to win!**

9/1/88 Call Farm Journal in Pennsylvania. Talk to Jonne Sparl Welsh, editor, and ask if they had ever written any stories about stray voltage and she said, yes, in the March 1987 issue. She will send a copy! **God, thank you.** Found Wally and Joan Daggett in Wisconsin. Call him. Ah, what help! He tells me he got FmHA loan in 1982 from FmHA for $100,000.00 because of his trouble with stray voltage. In 1984 he won a $1.4 million dollar lawsuit because of his trouble with stray voltage. He sends me papers for proof! Oh, he also has a wealth of information:

1. A Bill introduced on 3/22/88 H.R. 4227 by Congressman Stangeland of Minn. to provide a grant to study how to minimize electric voltage differences in lifestock holding and feeding areas. It recognizes that stray voltage is a national dairy problem and needs to be addressed.

2. Letter from Vance Clark, FmHA Administrator, dated 2/17/87 to Senator William Proxmire of Wisconsin telling all about stray voltage. Letter says FmHA knows all about stray voltage. It has been a problem and, here is a big one — FmHA makes sure all dairy barns follow National Electrical Code. What a joke! **He's lying!** But Robby Webb's got something to work on! I am more determined to win now. I know I am on the right track, just got to get somebody to listen!

9/6/88 Webb Biard sends first legal papers to AMPI, Universal and Deltrol Controls to demand payment in 30 days or a lawsuit will be filed at the courthouse and a trial will be requested!

Deltrol Controls answer with letter that says Universal and AMPI at fault, not them. Universal and AMPI sent us papers saying they are not prepared to answer at this time!

10/15/88 **Trouble! Trouble!** Go to mailbox to get milk check! **Something is wrong as check says $0000.00 — no money.** I call AMPI Arlington office and asked to talk to Kay Fowler in Payroll. She said $6,426.00 milk assignment came to her office last week Sept. 1988. She said she looked at it and thought something was wrong because with 55 cows I wasn't going to have enough money to cover it. Also she said date was 1 year off — 9/15/87, not 9/15/88. So she called FmHA office in Paris to ask what was going on. They told her everything was right. They had to have their money! A year before on 9/18/87 office visit, Billy Curb, county supervisor, made the statement in his notes that "Mr. Webb's account will be delinquent 1/1/88 and since the milk income is low, the milk assignment can not be raised at this time." **Now with no notification** he decides to take the full milk assignment which he knows I am unable to pay because of all the trouble with stray voltage. See 4/21/88 Farm and Home Plan where debt repayment was spelled and he knew if he now required the $6,426.00 milk assignment he would run me out of business. He sat on it for over a year and now decided arbitrarily to use it.

I got down on my knees and prayed, God, please help me. Answer my prayers, and God came in my house and spoke to me and said I answered your prayer on 12/20/87 and helped you find stray voltage, now you get up and go help other dairymen not as strong as you are — do you understand? I said **yes!** What God told me — turn AMPI, FmHA and make them do right **to help people that need help!**

10/ 16/88 Sold 8 cows to pay farm operating and family expenses. All money had over $4,000.00 expenses to be paid! Tough times don't last, but tough people do!

10/19/88 **Big day, may see some progress.** AMPI coming with their insurance carrier to talk about settlement and look at my documentation of losses. Farilyn stays home that day to help me and to show southern hospitality. Fixed lunch! She is really a good old girl.

8:00 A.M. James McAdams AMPI Arlington in charge of fieldservice and all equipment sales. He also had Neal Johnson, Chief Engineer, Universal Co-op with him to check dairy farm out. Jay Hicks fieldman from Sulphur Springs to run his test on equipment. Farilyn took pictures of all test run, great. Guess what Neal Johnson has got — a voltmeter and is checking for stray voltage. Showing James McAdams how to do it. This is great, just like I have told and showed them. AMPI doesn't know stray voltage. When they are finished running equipment check, Jay Hicks, AMPI fieldman out of the Sulphur Springs office, fills out AMPI System Analysis worksheet, and James McAdams (his boss) watches him and Jay Hicks doesn't do anything with stray voltage test. James McAdams then checks it Satisfactory! We've got them, just where I want them, they are caught red-handed! **Proved!**

10:00 A.M. H.V. Canty, claim representative for Kemper Insurance, insurance carrier for AMPI arrives for meeting with all of us and to get documentation on our damages. Boy, was I ready for him, sure hope he brought a blank check with him. James McAdams, Neal Johnson, H.V. Canty, Farilyn and I sat in living room and we gave them proof of dollar losses from Paul Wells, CPA, AID Reports, AMPI System Analysis that showed stray voltage test — never run until this morning. All claims and statements made by AMPI in printed material. AMPI corporate board resolution showing their stand against stray voltage. I then showed them letter from Noble Anderson dated 6/19/87 stating that if we should have any quality problems, our field service people will be available for assistance, and to please let us know if we can help.

I told them I had asked for assistance and help, but Noble Anderson had done nothing! Websters dictionary defines "help" as remedy, relief, aid — so why doesn't AMPI do what they say they will do. It is a conspiracy on the part of AMPI management! H. V. Canty stayed for lunch and at 1:00 p.m. I had Dr. Lyle Nottingham come and talk to Canty. Nottingham told him all my trouble was stray voltage. Canty listened real good, as soon as Nottingham left, I had Ronald Green, licensed master electrician, here at 1:30 p.m. and he showed Canty how we found stray voltage. I know he believed him, good!

2:00 H.V. Canty and I are alone in dairy barn and he says he's got to ask me a question off the record. I said what is it. He asked why was I still doing business with AMPI. I told him I believed in AMPI as a farmer organization, and I can see where management was negligent. I didn't want anybody in AMPI hurt like I had been hurt. Remember God had answered my prayer, now I had to do something to help other dairymen! I said now write me a check and get me out of all this trouble. He said he didn't have authority to write one for $420,000, sorry!

10/20/88 **Politics**
Senator Phil Gramm comes to Paris and I go see him and ask for his help and leave all papers and documentation in regard to FmHA and AMPI thinking he might pull rabbit out of hat. He says he will turn problem over to James Terrell, his agricualtural liaison man in Washington D. C. office. 2 weeks — nothing. 3 weeks — I call — Terrell on honeymoon in Canada. **No help!**

11/1/88 I haven't told Farilyn about no money. Trouble can't go on long like this. I am praying hard, but don't seem to be getting anywhere. God, we have to have money. You knew that. God is there light at the end of this tunnel, patience I know, but how much, how long! Only got 48 cows.

11/8/88 Farilyn had to have major female operation. Crisis time. She has been hurting bad for last 30 days.

11/17/88 Sold cows as have no money for feed. What does FmHA want us to do — let them starve?

11/21/88 Farilyn comes home sick. Have to help a lot!

12/2/88 Farilyn and I had talked real good about how I felt about FmHA not following law and honoring my rights so I told her about FmHA putting milk assignment on for $6,426.00. I showed her where Billy Curb, FmHA County Supervisor had reviewed our records and showed we didn't have enough cash flow to raise milk assignment. He knew we were still losing cows that had their udders ruined, but now he has decided to run us out of business and leave us with not one penny. He knows what he is doing to us. I told Farilyn we were going to let FmHA county supervisor make first move on this and, sure enough, county supervisor just couldn't wait. On 12/2/88 Farilyn and I are outside in yard and I am raking leaves when I see county supervisor and assistant county supervisor come driving up and I tell her to not say a word — let them do talking! They walk up and county supervisor says hello and we speak and then he says he heard I sold my cows and I said who told you that. He said he just heard it (wouldn't reveal). I then answered, yes. His next question was how many cows were ruined and damaged? I answered 13 head were damaged out of the 48 remaining cows. He said I will see you 12/8/88 at appeal hearing. They left. How did he think we were going to be able to live and exist. I was hurt! **Disappointed and disgusted. Pray for a good**

harvest, but keep on hoeing! Tough times don't last, but tough people do! ***(Seven Laws of Success)***

12/8/88 FmHA Appeal Hearing. Webb Biard, Farilyn and I. We show them again their own rules and regulations and they don't follow the law. Again, they don't show any documentation on FmHA's part. Again, FmHA's answer is NO. What does it take to make FmHA follow law!

12/10/88 Wrote letter again to Senator Phil Gramm asking for his special help to make FmHA follow law. No help there.

12/20/88 **Filed lawsuit in 62nd District Court. Robby Webb vs. AMPI, Deltrol, and Universal**
For $416,584.00 under Texas Deceptive Trade Practices Act damages are tripled:

$$\begin{array}{r} 416{,}584 \\ \underline{X \quad\quad 3} \\ 1{,}249{,}752 \end{array}$$ plus punitive damages, plus attorney fees paid.

We aren't playing around anymore!

12/25/88 Quiet Christmas, but sad.

12/29/88 Call FmHA Washington office and they send me rules and regulations for **emergency loans**. Could this work for us, just maybe. It says an emergency declaration could be declared by President of United States. **Pray for it!** Why can't they help us, please help us.

1/1/89 New Year, it has to be better than 1987 and 1988.

3/1/89 Went to Senator Phil Gramm's Lubbock office. Talked with Ag-aid Lindsey Dingmore. He reviewed all my documentation and agreed with me. He saw the seriousnes of the situation. He called FmHA office at Temple, TX and they verify the law. But why don't they follow the law for me? I asked for Senator Phil Gramm's special help to get an appointment with President Bush for an emergency declaration to make an emergency loan to Robby Webb. That legislation is on the books.

3/9/89 FmHA notice accelerate loan (foreclosure). First appeal not even heard yet.

5/17/89 Received letter from Representative Jim Chapman who has had a Mr. Greg Stark forward additional information on stray voltage to Chapman's office. He will keep me informed of all progress.

U.S. DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION
DISASTER EMERGENCY LOANS

The Farmers Home Administration (FmHA) can make emergency (EM) loans in counties where physical property loss or damage and/or severe production losses occur as a result of a natural disaster that substantially affects farming, ranching, or aquaculture operations. EM loans will be made available to applicants having qualifying physical and/or production losses in a county named by FEMA as eligible for Federal assistance, under a major disaster or emergency declaration by the President, or under a natural disaster determination by the Secretary of Agriculture; and to applicants who have suffered qualifying severe physical property losses when, prior to action by the President or the Secretary, the FmHA Administrator has determined that such losses have occurred as a result of a natural disaster. Farmers, ranchers or aquaculture operators in counties adjacent to such named counties may also apply for and qualify for EM loans.

A natural disaster determination by the Secretary of Agriculture is initiated by a formal written request from a State Governor or Indian Tribal Council. However, no such request is needed to initiate the action of the FmHA Administrator. The FmHA Administrator's action is initiated by an FmHA County Supervisor and requested by the FmHA State Director.

WHO CAN GET A LOAN?

To qualify for an EM loan an applicant must:

. Be an established family farm operator (owner or tenant), who was operating and managing a farm at the time of the disaster in a county which has been named as an area eligible for EM loans. An applicant can be farming as an individual, cooperative, corporation, partnership, or joint operation.

2. Be a citizen of the United States or legal resident alien. If an applicant is a cooperative, corporation, partnership, or a joint operation, more than 50 percent interest in the entity must be owned by U.S. citizens and/or legal resident aliens; and the entity must be primarily engaged in farming, i.e., derive more than 50 percent of its income from all sources from production of agricultural products.

3. Have the industry, ability, training or experience necessary to repay the loan, and realistically project the ability to do so.

4. Provide evidence of having suffered a qualifying physical loss, or a production loss of at least 30 percent in any single enterprise constituting an essential part of the total farming operation.

Revised November 1987

However, applicants are precluded from counting crop production losses to crops that could have been insured by comprehensive crop insurance programs sponsored by the Federal Crop Insurance Corporation, but were not insured.

5. Be unable to obtain suitable credit from a lender(s) other than FmHA, when offering all assets owned as collateral to such lender(s).

6. Provide adequate security.

7. Be able to realistically project a positive cash flow for the term of the loan.

All applications will be considered without regard to age, race, color, creed, sex, marital status, handicap or national origin.

WHAT IS THE PURPOSE OF THE PROGRAM AND HOW CAN LOAN FUNDS BE USED?

FmHA EM loans are made to eligible applicants to help them overcome the adverse effects of a natural disaster. Loan funds may be used to:

- Restore or replace damaged property;
- Pay all or part of production costs associated with the disaster year and/or the year following the disaster year;
- Pay delinquent debt installments;
- Pay essential family living expenses;
- Construct, buy or improve essential buildings;
- Purchase essential machinery, equipment and foundation livestock;
- Pay costs to reorganize a farming system, when justified; and
- Refinance short, intermediate and/or long-term debts, when justified.

WHAT IS THE LOAN CEILING?

Eighty percent of the calculated actual production loss and 100 percent of the actual physical loss, or $500,000, whichever is the lesser amount, for each disaster.

DO FmHA LENDING CONDITIONS DIFFER SIGNIFICANTLY FROM THOSE OF PRIVATE LENDERS?

Yes. Some of the more significant of these conditions are:

1. Applicants must agree to maintain records, acceptable to FmHA, on their farming operation.

2. Applicants must agree to operate in accordance with a plan of operation jointly developed and agreed upon with FmHA.

3. Applicants must agree to obtain FmHA's prior consent whenever: (a) changes are needed in the agreed upon plan of operation; (b) assets, with a valid FmHA lien, are to be sold or otherwise disposed; and (c) proceeds derived from the sale of assets, with a valid FmHA lien, are to be used for any purpose other than applying them on the FmHA debt.

WHAT ARE THE TERMS OF THE LOANS?

Loans to recover from production losses to crops and/or livestock production, and loans to recover from physical losses to supplies, livestock and equipment will normally be scheduled for terms up to 7 years, as needed. Under conditions of special need, terms of not more than 20 years may be authorized for production type losses. However, real estate is normally required as security when terms exceed 7 years. Loans to recover from physical losses to essential buildings and facilities are normally made for terms not exceeding 30 years. However, under conditions of special need, terms of not more than 40 years may be authorized.

WHEN ARE BORROWERS REQUIRED TO RETURN TO PRIVATE CREDIT SOURCES?

All EM loan borrowers, who were not able to obtain their needed credit elsewhere at the time of receipt of their initial EM loans, will be reviewed for "graduation" to other creditors 3 years after their initial loan is made; or at any earlier date when it appears they can obtain their needed credit elsewhere; and every other year thereafter, until graduation is accomplished.

WHAT IS THE INTEREST RATE?

Currently the interest rate is 4.50 percent per annum for all new EM loans made, and for all EM actual loss loans rescheduled or reamortized.

WHAT SECURITY IS REQUIRED?

Collateral for EM loans must be of such a nature and in sufficient amount to assure repayment of the loan. Required collateral will consist of the best lien obtainable on assets owned by an applicant who is an individual. In the case of an entity applicant, the best lien obtainable will be taken on assets owned by the entity, and assets owned by each individual having an ownership interest in the entity. If the usual collateral is not available as a result of the disaster, exceptions to the security requirements may be made, provided certain other conditions can be met. In such cases, further consideration will be given to the applicant's history of managerial ability, soundness of operation, and actual earnings.

whenever FmHA has a security interest in a crop(s) being grown or to be grown by an EM loan borrower, comprehensive crop insurance is required for at least the minimum level of coverage on any crop eligible under programs sponsored by the Federal Crop Insurance Corporation. Effective for crops harvested after December 31, 1986, applicants for EM loans must have had comprehensive crop insurance in effect at the time of occurrence of the disaster, if it was available. If crop insurance was available for any crop(s), but was not in force at the time of the disaster, FmHA will not consider any production losses to such crop(s) when calculating eligibility for a production loss loan.

IS THERE A TERMINATION DATE FOR FILING APPLICATIONS?

Yes. Applications for EM loans must be filed within 8 months of the date the disaster decision is announced by the President, the Secretary, or the FmHA Administrator.

WHERE ARE APPLICATIONS FOR LOANS RECEIVED?

Applications are received in FmHA County Offices. These offices are listed in the telephone directory under U.S. Government, Department of Agriculture, Farmers Home Administration. Application information may also be obtained by writing the Farmers Home Administration, Washington, DC 20250, giving your name and address and the name of the county in which the farming operation's headquarters is located.

Revised: November 1987

United States Department of Agriculture
Farmers Home Administration
Washington D.C. 20250

FEB 17 1987

Honorable William Proxmire
United States Senate
Senate Dirkson Building, Room 530
Washington, D.C. 20510

Dear Senator Proxmire:

This is in reference to your recent letter concerning a letter from Mr. Wallace H. Doggett of Random Lake, Wisconsin relative to stray voltage information that may have been given to Farmers Home Administration (FmHA) borrowers.

We do not believe that FmHA has ever directly notified the millions of FmHA borrowers of the stray voltage potential. Since beginning in the 1930's, FmHA has required that all electrical installations meet the requirements of the National Electrical Code (NEC). Where the NEC has been followed very little stray voltage should occur. FmHA has also provided its State Office Engineers and Architects with current copies of the Midwest Plan Service (MWPS) "Structures and Environment Handbook," MWPS-1. This Handbook has a portion explaining the stray voltage problem, causes and solutions in Chapter 302, Electrical Wiring of Farm Buildings. This will provide assistance to our field personnel in case a report of stray voltage should be received. We have no knowledge of any reports, however.

FmHA relies on the educational arm of the Department of Agriculture, Cooperative Extension Service at each Land Grant University, to keep the general rural public informed of potential problems such as stray voltage.

Sincerely,

/s/ VANCE L. CLARK

VANCE L. CLARK
Administrator

FmHA Farmers Home Administration is an Equal Op
Complaints of discrimination should be sent t
Secretary of Agriculture, Washington, D.C. 2

99th CONGRESS
2d Session

H. R. 4227

To provide a grant to study how to minimize electric voltage differences in livestock holding and feeding areas.

IN THE HOUSE OF REPRESENTATIVES

March 22, 1986

Mr. Stangeland introduced the following bill; which was referred to the Committee on Agriculture

---

A BILL

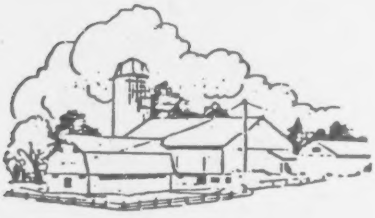
To provide a grant to study how to minimize electric voltage differences in livestock holding and feeding areas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Livestock Protection From Stray Voltage Act".

Sec. 2. Section 1434 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3196) is amended by inserting the following new subsection at the end thereof:

"(f) Without regard to any consultation under subsection (c) of this section, the Secretary shall, to the extent feasible, provide for the award of a grant to an eligible institution, on the basis of the priorities assigned through the peer review system, such grant to be awarded for the purpose of determining how to minimize electric voltage differences in livestock holding and feeding areas.".

WORKSHOP
STRAY VOLTAGES IN AGRICULTURE



August 10-11, 1983
Sheraton Ritz Hotel
Minneapolis, MN

Sponsored by:
National Rural Electric Cooperative Association

Co-sponsors:
American Dairy Science Association
American Society of Agricultural Engineers
Edison Electric Institute
Milking Machine Manufacturer's Council
National Mastitis Council
Oregon State University Extension Service
Stray Voltage Research Council
USDA Extension Service

WORKSHOP OBJECTIVE

The purpose of the WORKSHOP ON STRAY VOLTAGES IN AGRICULTURE was to consolidate, review, and publish the latest information and state-of-the-art technology on identfying and correcting the existence of stray voltage problems in agricultural production structures.

The program format consisted of four panel presentations on the following topics:

1. Known effects of stray voltages on animals.
2. Known sources of stray voltages.
3. Diagnostic procedures for detection and measurement of stray voltages.
4. Presently-used treatments or corrective procedures for stray voltage problems.

Each panel shared with the audience a draft copy of its assigned topic report. The audience had opportunity to respond to the report. Panel members fielded questions and received comments from the audience. After the Workshop, each panel refined its report, incorporating appropriate inputs from the audience.

The informal evening session provided opportunity for visiting. It also permitted attendees to learn about existing educational and training programs on stray voltages, review stray voltage publications, and evaluate hardware or other devices currently being marketed to solve stray voltage problems.

WORKSHOP PLANNING COMMITTEE

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Extension Agricultural Engineer
Oregon State University

Lowell J. Endahl, Co-chairman
Manager Research & Development
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Proceeding of
Workshop On
Stray Voltages in Agriculture

August 10-11, 1983

Minneapolis, MN

Diagnostic Procedures for Detection and Measurement of Stray Voltage

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Alvin C. Bierbaum, Iowa Association of Electric Cooperatives
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Truman C. Surbrook, Michigan State University
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Dale Williston, Ontario Hydro

PREFACE

Since: 1) there are numerous sources of problem-level stray voltage; 2) their combination and interaction can be complex; 3) farmstead electrical systems vary dramatically in physical configuration; and 4) problem solutions must be matched to sources; the need for flexible yet source-specific diagnostic procedures is evident.

The agricultural community, in particular the dairy industry, is acutely aware of the problems created by stray voltage. However, because the visible symptoms are not unique and because most people in the agricultural industry do not have adequate experience in electrical systems to address source identification in depth, reliable, yet simple, screening procedures are necessary.

United States
Department
of Agriculture

Rural
Electrification
Administration

Washington
D.C.
20250

September 24, 1981

SUBJECT: Stray Voltage in Dairy Farms

TO: All Electric Borrowers

In recent years, there has been a large increase in complaints related to stray voltage on farms. Generally, the complaints involve dairy operations although reports have also involved swine farrowing units. These complaints often relate to new dairy facilities which, at minimal extra cost, could have been constructed so as to preclude current flow through the livestock due to stray voltage. There is general agreement among most people who have done research in this area that very low voltages (as low as 0.25 to 0.5 volts) may, under certain conditions, cause problems for livestock. It seems therefore that dairy operations, swine farrowing operations, etc., should be considered as critical loads with stringent requirements which are not met by the normal electric service.

The purpose of this letter is to provide a brief summary of certain aspects of the stray voltage phenomenon and to recommend that borrowers make appropriate information concerning the subject available to local contractors and to co-op members who are involved in dairy, swine farrowing, and similar operations. The information provided to members should discuss methods of preventing stray voltage problems in the livestock (dairy) facilities. Numerous technical papers have been written on the phenomenon and a brief bibliography of a representative sample of the papers is included with this letter. The papers provide valuable information and are recommended reading for borrowers' personnel who may be involved with the stray voltage problem.

There are two basic causes of voltage on the electric system neutral. They are improper or faulty wiring and/or equipment, and normal load current flowing in the neutral and to ground. Although a few of the improper or faulty wiring and equipment conditions can occur on power suppliers' facilities, most occur on consumers' facilities. A list of actual situations as reported by Stetson, Soderholm and Shull in ASAE Paper No. 80-3505 includes:

Electric trainer grounded to water line in barn
Imbalance in 120-volt loads
Intermittent short in fan motor switch wiring
Insulation failure in wiring to submersible pump motor
Contact between ground conductor and 240-volt switch
Neutral conductor too small
Service conductor too small
High resistance (poor) neutral connection
Bare wires in outlet box
Unbalanced load on the legs of the consumer's three-wire service
to the barn

Parallel neutral connection from two entrance panels
Leakage across wet spider web
Rodent damage to wiring
120-volt solenoid connected from line to ground
Faulty water heater element

Where conditions such as the above exist, it is, of course, necessary that they be corrected. Determining the specific cause of voltage in the livestock facility can be extremely difficult due to the complexity of the situation and often the sporadic nature of the voltage. Because of this, and for other reasons discussed later, it is highly recommended that gradient control (equipotential plane) be designed and built into all such facilities. If the facility is properly constructed with an equipotential plane, there will be essentially no voltage across the livestock even though voltage with respect to remote earth may exist on the neutral. This will be further discussed in the following paragraphs.

Even if all the farm wiring and equipment is operating normally, it is still likely that dairy cattle or other livestock in inadequately constructed facilities may be receiving slight electric shocks that can be troublesome. This can be caused by potential differences due to normal system neutral potential. Electric potential voltage on the grounded system neutral is a normal system condition. The magnitude of this voltage will depend on several factors including load current, system (including consumer) grounding, and whether the primary line is single-phase or three-phase. Generally, sufficient grounding can be obtained to keep the neutral voltage low enough so that people do not feel a tingle. The power supplier should strive to keep the voltage on the neutral as low as practical through system grounding practices.

It should be realized, however, that the neutral system potential cannot be kept at the 0.25 to 0.5 volt level which is generally believed to be necessary to assure that dairy cattle will not be affected by the voltage. It should also be realized that the system neutral potential is not the most significant criterion for determining the likelihood of shock to dairy cattle. The important element related to shock is the current. The driving force for current is not potential - it is potential difference between the contact points on the animal, usually between extremities such as mouth, hooves, teat ends, etc. The potential difference across a dairy cow would not be expected to be at the same voltage level as the potential of the electric system neutral with respect to remote earth because varying degrees of electric bonding generally exist in the dairy facilities. Also, the concrete floor is probably not at remote earth potential with respect to the electric system neutral.

Potential difference between all likely dairy cow contact points in the dairy barn, including the concrete floor, can be held to very low voltage values (practically zero volts) by adequate bonding of all contact surfaces. The concrete floor can be bonded by means of closely spaced mesh in the floor. This is generally referred to as creating an equipotential plane and is more fully explained in several of the referenced published papers. Not mentioned in the referenced papers, but also important, is a metal ring or rim installed around the edge of the concrete and bonded with the rest of the system. Ideally, the equipotential plane should extend throughout the entire dairy facility, however, of particular concern to the dairy farmer should be maintaining equipotential planes at water bowls or watering places, mangers or eating places, stalls or places the animals touch, and milking parlors and related milking equipment.

A second method available to the dairy farmer for limiting the potential on the system neutral in the dairy facilities is by use of an isolation transformer. If the transformer is placed at the service to the dairy facilities and all metallic paths between the dairy facilities' electric and grounding system and the rest of the farm's electric and grounding system are eliminated, the neutral potential within the dairy facilities will be very low. It is important to make measurements to confirm that the two electric systems are isolated and it is sometimes difficult to locate connecting paths between the grounded neutrals of the two different systems. Underground metallic water lines or gas lines interconnecting the two systems may need to be interrupted.

Isolation of the entire service neutral from the primary neutral by placing a gap or a surge arrester between the systems is not recommended. This technique sacrifices the safety aspects of the solidly interconnected grounded systems. The gap interrupts the metallic return path that is relied upon to ensure operation of the protective device in the event of a fault which places primary voltage on the neutral of the secondary system. The NESC provision permitting the non-interconnected neutrals (spark gap interconnection) was originally written to apply to a delta primary system which has no neutral conductor. It was to provide for a gap only between the primary surge arrester grounding conductor and the secondary system neutral.

SUMMARY:

1. Proper system grounding practices should be followed by the power supplier and the consumer in order to maintain system neutral potential as low as practical. It is impossible to define a minimum practical value because of the many varying factors that can affect system neutral potential.

2. In certain situations, livestock are extremely sensitive to very small voltages (perhaps 0.25 to 0.5 volts). Under normal operational conditions, voltage on the electric system neutral will generally exceed these levels. In areas of high earth resistivity, the system neutral voltage may normally exceed these levels by a wide margin.

3. Two methods which have been successfully applied by dairy farmers to limit potential differences to the low levels desired for dairy operations are the equipotential plane and the isolation transformer. The equipotential plane is simply an extension of the normally applied concept of bonding equipment, enclosures and similar conductive surfaces together. It should be incorporated into the construction of all new livestock facilities. It can be added to existing facilities, although not as easily or economically as incorporating it into the initial construction. Perhaps a more economical procedure at an existing facility is the installation of an isolation transformer. Both methods have been discussed in the referenced papers.

4. Isolation of the primary and secondary neutrals through a spark gap is not recommended because of the uncertainty of protective device operation in the event of a fault involving the primary phase conductor and the secondary neutral.

Joe S. Zoller

JOE S. ZOLLER
Assistant Administrator - Electric

Enclosures

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U.S. DEPARTMENT OF AGRICULTURE,
RURAL ELECTRIFICATION ADMINISTRATION,
Washington, DC, April 27, 1983.

Subject: Stray Voltage in Dairy Farms.
To: All REA Electric Borrowers.

In September 1981 a letter was sent to you on the above subject. A summary of the stray voltage phenomenon was provided along with a recommendation that appropriate information concerning the subject be made available to local contractors and to consumers who are involved in dairy, swine farrowing and similar operations.

The stray voltage phenomenon and proper solutions to problems at the affected facilities are critically important to consumers involved in dairy, swine farrowing, and similar operations. We strongly urge you to make appropriate information available to your consumers by use of bill stuffers, direct mailing or other suitable means. A sample notice that could be sent to consumers is included with this letter. The notice could, of course, be modified to suit your needs.

Questions are often asked regarding responsibility for dealing with the stray voltage phenomenon. We recognize that a small voltage on electric system neutrals is a normal condition that always exists. The voltage is variable depending on many factors. Consumers whose service requirements are more stringent than the service normally supplied to all consumers can and should construct their facilities in such a way to satisfy their special requirements. However, the consumers may not be aware of the critical nature of their operation or of the things that can be done to prevent them from having problems. We strongly urge you to assist your consumers who have, or are likely to have, stray voltage problems. The information you can supply, and your cooperation in helping them to avoid or alleviate problems, is very important.

Our September 1981 letter contained a bibliography or representative papers on the stray voltage phenomenon. Many additional papers have been published by the American Society of Agricultural Engineers, 2950 Niles Road, St. Joseph, Michigan 49085. Since 1981, considerable work has been done on the installation of equipotential planes in existing dairy facilities. Papers describing successful and economical installations should be available in the near future. The only difficult part is installation of the grounding conductors in the concrete floor. This can, however, be done by grooving the floor, perhaps a section at a time, with a carbide or diamond-tooth saw. For most efficient conductor use, the grooves are cut parallel and a few inches apart in the most critical areas. Spacing can probably be increased in the less critical areas. Quick setting grout is used to secure the conductors in the grooves. The use of concrete grooving saws makes the equipotential plane the preferable method of dealing with the critical existing installations. The equipotential plane should certainly be installed in all new installations.

JOE S. ZOLLER,
Assistant Administrator—Electric.

Enclosure.

STRAY VOLTAGE

As farms have become more electrified over the years, a previously little-known condition has grown to serious proportions in some dairy, swine farrowing and similar operations. The term commonly used to describe the phenomenon is "stray voltage." A small electric potential (voltage) exists between grounded neutral and earth on any electric system. This voltage will also exist on conductive objects that are connected to the electric system neutral for safety in the event of a fault. These voltages are usually too low to be felt by humans due to the insulation effect of skin, shoes, etc., and perhaps a higher natural tolerance. Suckling pigs and dairy cattle are, however, very sensitive to extremely low voltages because of natural low tolerance and the type of contact (tongue and teat-end contact, for example) with conductive objects. The special and critical aspects of livestock contacting these low voltages that normally exist should be considered in all dairy, swine farrowing and similar operations.

SYMPTOMS

Since most research has been done on dairy farms, we shall discuss these installations. How does a dairy operator determine whether or not a problem may exist?